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**Roman law in the modern world /**



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# ROMAN LAW

## IN THE MODERN WORLD

BY

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VOL. III

SUBJECT-GUIDES TO THE TEXTS OF ROMAN LAW, TO THE  
MODERN CODES AND LEGAL LITERATURE  
INDEX TO VOLS. I-III

BOSTON, U.S.A.  
THE BOSTON BOOK COMPANY  
1917

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*The Riverdale Press, Brookline, Mass., U. S. A.*



## LIST OF PRINCIPAL ABBREVIATIONS USED IN ROMAN LAW TREATISES

- B., Bas. = Basilica of Leo VI.  
 C.; Cod.; Code = Code of Justinian. (Code, 8, 10, 6 is 8th book, 10th title, 6th law or constitution.)  
 C. Th.; Cod. Theod. = Code of Theodosius. (It is cited like the Code of Justinian.)  
 Collatio = Mosaicarum et Romanarum legum collatio.  
 Const. = Constitution; sometimes referring also to a prefatory constitution of the Code or Digest, e.g. Const. "Omnem."  
 D.; Dig.; Digest; P. = Digest or Pandects of Justinian. (Dig. 17, 1, 25 pr. is 17th book, 1st title, 25th fragment, principium or first paragraph.)  
 Frag. Vat. = Vatican Fragments.  
 G.; Gaius = Institutes of Gaius. (Gaius, 2, 1, is 2d book, 1st section.)  
 I.; Inst.; J. = Institutes of Justinian. (Inst. 2, 6, 10, is 2d book, 6th title, 10th section.)  
 l. = Constitution, law or fragment.  
 L. = Book. (Unless it is the numeral "50".)  
 N.; Nov.; Novel = Novels of Justinian. (Nov. 18, 3 is 18th novel, 3d chapter.)  
 Paul. Sent.; Sent. P. = Sententiae of Julius Paulus.  
 Pr.; pr. = Principium, the first paragraph and preliminary section of the Institutes, or of a fragment of a title of the Digest, or of a constitution or law of the Code.  
 SC. = Senatusconsultum or decree of the Senate.  
 Theophilus; Theoph. Inst. = Paraphrase of the Institutes of Justinian by Theophilus.  
 Ulpian Reg.; Reg. = Regulae of Domitius Ulpian.  
 XII Tab.; XII Tables = Law of the XII Tables.  
 § = Section.

The latest modern Civilians or Romanists, including the author, cite the *Corpus Juris Civilis* from the stereotyped edition of Krueger, Mommsen, Schoell, and Kroll; and the Code of Theodosius from Mommsen's edition.



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PART I

SUBJECT-GUIDES





# PART I

## SUBJECT-GUIDES

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**II. Texts of Edicts: —**

BRUNS, Fontes Juris<sup>6</sup>, pp. 202–37.

GIRARD, Textes de droit romain<sup>3</sup>, pp. 131–68.

WALKER, Edictum Julianum, Cambridge, 1877.

**III. Modern references: —**

AUSTIN, Jurisprudence<sup>3</sup>, vol. ii, pp. 610–25 (Lecture 35).

BRY, L'édit de Caracalla de 212, etc. (in Études d'his-

toire juridique off. à P. F. Girard, vol. i, pp. 1–42, Paris, 1913).

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BUCKLAND, Equity in Roman law, p. 5, London, 1911.

KALINDERO, Droit prétorien et réponses des prudentes, (1885).

KRUEGER, Quellen, etc., pp. 84–92.

LENEL, Das Edictum perpetuum, Leipzig.

MUIRHEAD, Roman law<sup>2</sup>, pp. 289–91.

TRUAX, The Roman praetor and jus honorarium, 15 Albany Law Journal, 136.

**IV. See also infra § §947–949; supra vol. i, § §60–61.****Greek philosophy, especially Stoicism: references.**

§ 947

**I. Texts of Roman law: —**

CODE, 4, 56 Si mancipium ita venerit ne prostituatur.

— 8, 51 (52) De infantibus expositis, etc.

COD. THEODOS. 5, 9 De expositis.

DIG. 1, 3, De legibus, 2.

**II. Modern references: —**

ARNOLD, Roman Stoicism, Cambridge, 1911.

BEROLZHEIMER (Jastrow, translator), The world's legal philosophies, ch. 3, Boston, 1912.

BRYCE, Methods of legal science (Studies in history, etc. pp. 607, 637).

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- EMERTON, Stoic terminology in Roman law, 3 *Law Quart. Rev.*, p. 64.
- GRAPEL, Sources of the Roman civil law, ch. 8.
- HAINES, The law of nature in state and federal judicial decisions, 25 *Yale Law Journal*, p. 617.
- HERFORD, The Stoics as teachers, Cambridge, 1882.
- LEFROY, Rome and law, 20 *Harv. Law Rev.*, pp. 608-11.
- LEONHARD, The vocation of America for the science of Roman law, 26 *Harv. Law Rev.*, pp. 408-11.
- MAINE, Ancient law, ch. 3.
- ORTOLAN (Prichard and Nasmith, translators), History of Roman law, § 263, London, 1871.
- PATTEE, The essential nature of law or the ethical basis of jurisprudence, Chicago, 1909.
- PHILLIMORE, Principles and maxims of jurisprudence, London, 1856.
- POLLOCK, History of the law of nature, 1 *Columbia Law Rev.*, p. 11, 2 *Columbia Law Rev.*, p. 131.
- RAVENET, The spirit of the Roman law, 12 *Green Bag*, p. 598.
- SALMOND, The law of nature, 11 *Law Quart. Rev.*, p. 121.
- SISSON, Can virtue be taught? 41 *Educational Rev.*, p. 261.
- III. See also *supra* vol. i, §§ 62-7.

§ 948 **Jus respondendi and jurists of the Early Empire: references.**

I. **Texts.** There is a restoration of the writings of all the jurists mentioned in Justinian's Digest made by:

LENEL, *Palingenesia juris civilis*, 2 vols., Leipzig, 1889.

The next important textual works are:

KRUEGER, MOMMSEN, and STUDEMUND, *Collectio librorum juris ante-Justin-*

*iani*, 3 vols., Berlin, 1878-1905. These may be had separately. Vol. i — *Institutes of Gaius*, 5th ed., 1905; vol. ii — *Ulpian's Regulae, Paulus' Sententiae*; vol. iii — *Alia minora*, 1878.

GIRARD, *Textes de droit romain*<sup>3</sup>, Paris, 1903, contains among other things the text of Gaius' *Institutes*, Ulpian's *Regulae*, and Paulus' *Sententiae*.

HUSCHKE, *Jurisprudentiae ante-Justinianae*, 5th ed., 5 vols., 1886.

BREMER, *Jurisprudentiae ante-Hadrianæ*, vol. ii, Leipzig, 1898.

BRUNS, *Fontes juris* <sup>6</sup>, pars posterior, contains texts of Roman writers, not jurists, on legal subjects.

## II. Translations of texts.

Extracts from the works of the jurists contained in the Digest of Justinian will, of course, be found translated (1) in the French translation of the *Corpus Juris Civilis* (*Institutes, Code, Digest, Novels*), 16 vols. quarto, Paris, 1806-10; (2) in the German translation of the same, Leipzig, 1830-33; (3) in the English translation of the Digest, books 1-15 inclusive, Monro, Cambridge, 1904-9.

### (a) English translations of Gaius' *Institutes*:

ABDY and WALKER, 3d ed., Cambridge, 1885.

CROSS (scattered throughout Hunter's *Roman law* <sup>4</sup>—see, however, pp. 1113-18).

MEARS, *Institutes of Gaius and Justinian*, London, 1882.

MUIRHEAD, Edinburgh, 1895. (§948)

POSTE, 4th ed., Oxford, 1904 (the standard work).

TOMKINS and LEMON, London, 1869.

### (b) French translations of Paulus' *Sententiae*:

DAUBANTON (French translation of the *Corpus Juris Civilis*, see *supra*), *Le trésor*.

### (c) English translations of Ulpian's *Regulae*:

ABDY and WALKER, *Commentaries of Gaius and Rules of Ulpian* <sup>3</sup>, London, 1885.

MUIRHEAD, *Institutes of Gaius and Rules of Ulpian*, Edinburgh, 1895.

## III. Roman law citations.

COD. THEODOS. 1, 4 *De responsis prudentium*.

DIG. 50, 17 *De diversis regulis juris antiqui*.

GAIUS 1, 7 (among Eng. transl., Poste <sup>4</sup>).

INST. 1, 2, 8 (among Eng. transl., Moyle <sup>4</sup>).

THEOPH. 1, 2, 8.

## IV. Modern references.

APPLETON, *Quaestio Domitiana, responsum Celsinum* (in *Mélanges P. F. Girard*, vol. i, pp. 1-26, Paris, 1912).

- (§948) AUSTIN, *Jurisprudence*<sup>3</sup>, vol. ii, pp. 567-94 (Lectures 31-4).
- BALOG, *Skizzen aus der römischen Rechtsgeschichte* (in *Études d'histoire juridique off. à P. F. Girard*, vol. ii, pp. 337-540, Paris, 1913).
- BRYCE, *Studies in history and jurisprudence*, pp. 607-37, 676-86, New York, 1901.
- BUHL, *Salvius Julianus*, Heidelberg, 1886.
- CAMMELLI, *Le due scuole dei giureconsulti romani*, Florence, 1898.
- CARLYLE, *Medieval political theory*, vol. i, pp. 19-61, London, 1903.
- COSTA, *Papiniano — studio di storia interna del diritto romano*, 4 vols., Bologna 1894-98.
- CLARK, *Roman private law-sources*, pp. 107-44, Cambridge, 1906.
- ESMEIN, *Fragments du livre ix des Responsa Papiniani avec les notes de Paul et d'Ulpian* (in *Mélanges*, pp. 339-58, Paris, 1886).
- FINK, *Roman equity*, 1 *Law Mag. and Rev.*, p. 667.
- GIRARD, *Manuel de droit romain*<sup>5</sup>, pp. 62-70.
- GLASSON, *Étude sur Gaius*, 1 *Law Quart. Rev.*, p. 508.
- GREAT JURISTS OF THE WORLD, pp. 1-44, (vol. ii, *Continental Legal History Series*, Boston, 1914).
- HUNTER, *Roman law*<sup>4</sup>, pp. 65-85.
- KALINDERO, *Droit prétorien et réponses des prudents*, 1885.
- KELLY, *The Gaian fragment*, 6 *Ill. Law Review*, p. 561 (1912).
- KNIEP, *Der Rechtsgelehrte Gaius*.
- KRUEGER, *Quellen*, pp. 109-14, 169-254.
- LEDLIE, *Great jurists of the world — Gaius*, 13 *Journal Compar. Legis.* (no. 28, July, 1913).
- LÉVY-BRUHL, *Examen d'un criterium grammatical de datation: le temps des verbes employés dans les citations des jurisconsultes romains* (in *Études d'histoire juridique off. à P. F. Girard*, vol. i, pp. 99-122, Paris, 1913).
- MAY, *Sur quelques exemples de gémiation juridique dans les auteurs littéraires latins* (in *Mélanges Gérardin*, 1907, pp. 399-412).
- MUIRHEAD, *Roman law*<sup>2</sup>, pp. 291-3, 296-314.
- REICH, *Graeco-Roman institutions*, 7 *Law Quart. Rev.* 86.
- ROBY, *Introduction to the Digest*, ch. ix-xv, pp. cxxiv-ccviii, Cambridge, 1886.

- SALMOND, *Law of nature*, 11 *Law Quart. Rev.*, p. 321.
- WILLIAMS, *Comparative Roman law*, 30 *Law mag. and Rev.*, p. 150.
- *Interpretation in Roman law*, 15 *Law Mag. and Rev.*, p. 223.
- *Legal etymology*, 28 *Law Mag. and Rev.*, p. 257.
- WINCHESTER, *Roman jurisprudence*, 52 *Albany Law Jour.*, p. 171.
- V. See also *supra* vol. i, §§68–110.

### Roman law of the Early Empire: references.

§ 949

#### I. Texts of Roman law:—

##### — *Leges, Edictum Hadrian., Responsa, SC.*

See §§ 67 and 118, also

BREMER, *Jurisprudentia ante-Hadriana*, vol. ii, "Empire," Leipzig, 1896–1901.

BRUNS, *Fontes juris*<sup>6</sup>, pp. 160–202 (SC.).

GIRARD, *Textes de droit romain*<sup>3</sup>, pp. 103–472.

##### — *Other Roman law citations.*

#### (a) *Ante-Justinian:*

GAIUS, 1, 4 and 5 (among Eng. transl., *Poste*<sup>4</sup>).

COD. THEOD. 1, titles 1, 2 and 3. These treat of constitutiones, edicta, rescripta, and mandata principum.

— 1, 6 *De officio praefecti urbis*.

#### (b) *Justinian:*

INST. 1, 2, *De jure*, etc., 5–6 (among Eng. transl., *Moyle*<sup>4</sup>).

DIG. 1, titles 4, 9–10, 12–18 (Monro, Eng. transl. of *Digest*, vol. i, pp. 23–4, 42–61). These treat of constitutiones principum; the office of senator, consul, praefectus urbi, quaestor, praetor, praefectus vigilum, proconsul, legatus, praefectus Augustalis, and praeses.

CODE, 1, titles 14–16, 23, 28, 35. These treat of leges; constitutiones, edicta, and mandata principum; senatusconsulta; the office of praefectus urbi, proconsul, legatus.

— 5, 8, *Si nuptiae ex rescripto*, etc.,

— 12, 63 (64) . . . *Insinuatores constitutionum*, etc. Nov. 17 *De mandatis principum*.

#### (c) *Post-Justinian:*

THEOPH. 1, 2 *De jure*, etc., 5–7.

HEXABIBLOS, 1, 1 *De legibus*, 1–4.

**II. Modern references: —**

- ALLEN, Enquiry into rise and progress of royal prerogative (1831).  
 ARNOLD, The Roman system of provincial administration to Constantine the Great<sup>2</sup>, Oxford, 1906.  
 AUSTIN, Jurisprudence<sup>3</sup>, vol. ii, pp. 567–600 (Lectures 31–4).  
 BOTSFORD, The Roman assemblies, New York, 1900.  
 BRY, L'édit de Caracalla de 212 (in *Études d'hist. jurid. off. à P.F. Girard*, vol. i, pp. 1–42, Paris, 1913).  
 BRYCE, Studies in history and jurisprudence, pp. 523–8, 669–741.  
 BUSSELL, The Roman Empire — constitutional history, vol. i, pp. 1–88, London, 1910.  
 FRIEDLANDER (Gough, translator), Roman life and manners under the Early Empire<sup>7</sup>, 4 vols., 1909–13.

GIRARD, Manuel de droit romain<sup>5</sup>, pp. 47–70.

HUNTER, Roman law<sup>4</sup>, pp. 65–85.

KRUEGER, Quellen, pp. 81–109.

MACKELDEY (Dropsie translator), Roman law<sup>14</sup>, §§ 40–55.

MACKENZIE, Roman law<sup>7</sup>, pp. 14–19.

MUIRHEAD, Roman law<sup>2</sup>, pp. 279–350.

PETIT, Traité de droit romain<sup>7</sup>, §§ 38–44.

SOHM (Ledlie<sup>3</sup>), Roman law, pp. 18–19, 70–112.

TRAUX, Senatusconsulta, 14 Albany Law Journ., 443.

TUCKER, Life in the Roman world of Nero and St. Paul, pp. 49–70, New York, 1910.

**III. See also infra §1021; supra vol. ii, §§ 873–907, “Constitutional and administrative law”; vol. i, §§ 111–15.**

**§ 950 Influence of Roman law on Christianity: references.**

- BALL, St. Paul and the Roman law, Edinburgh, 1901.  
 DEISSMANN (Stracham translator), Light from the ancient East<sup>2</sup>, London, 1911, (Index).  
 FERGUSON, The legal terms common to the Macedonian inscriptions and the New Testament, Chicago, 1914.

LYON, Le droit chez Isidore<sup>2</sup> de Peluse (in *Études d'histoire jurid. off. à P.F. Girard*, vol. ii, pp. 209–22, Paris, 1913).

MUNTZ, Rome, St. Paul, and the early Church, London, 1913.

See also supra vol. i, §§ 116–19.

**Ante-Justinian codes and collections: references.**

§ 951

**I. Texts of codes of statutes:—**

— **Gregorian and Hermogenian Codes:**

K R U E G E R—M O M M S E N—S T U E M U N D, *Collectio librorum juris ante-Justiniani*, vol. iii, Berlin, 1895. (The best edition.)

H A E N E L, *Codices Theodosianus, Gregorianus, Hermogenianus*, 1842–44.

D A U B A N T O N, *Le trésor*, etc. (in French transl. of *Corpus Juris*, — see *infra* § 952).

— **Theodosian Code:**

M O M M S E N—M E Y E R, *Theodosiani libri xvi cum const. Sirmondian.*, 2 vols. in 3, Berlin, 1895. (The best edition.)

G O T H O F R E D U S, J., *Codex Theodosianus cum perpetuis commentariis* (ed. Ritter), 6 vols., Leipzig, 1736–41.

H A E N E L, *Codices Theodosianus*, etc., 1842–44.

— **Const. Sirmondian.:**

These are in vol. 1, part 2, of M O M M S E N—M E Y E R, *Theodosian Code*.

— **Post-Theodosian Novels or the Novels of Theodosius II, Valentinian III,**

**Marcian, Marjorian, Leo and Severus, and Anthemius:**

These are in vol. 2, M O M M S E N—M E Y E R, *Theodosian Code*.

— **Other works:**

H A E N E L, *Corpus legum*, Leipzig, 1855. (For texts of Imperial statutes, prior to Justinian, not in *Cod. Theod.* or other codes).

H U S C H K E, *Jurisprudentiae ante-Justinianae*, 5th ed., 5 vol., 1886.

**II. Texts of collections of jurisprudence:—**

— **Collatio Mosaic. et Rom. legum:**

G I R A R D, *Textes de droit romain*<sup>3</sup>, pp. 543–77.

H Y A M S O N, *Coll. Mos. et Rom.*, London, 1913. (Text and Eng. transl.)

K R U E G E R—M O M M S E N—S T U E M U N D, *Coll. lib. ante-Just.* vol. iii.

— **Consultatio vet. cuj. jurisconsult.:**

G I R A R D, *Textes*<sup>3</sup>, pp. 590–606.

K R U E G E R—M O M M S E N—S T U E M U N D, *Collectio*, etc., vol. iii.

(§951) — **Syrian-Roman Law book:**

BRUNS and SACHAU, *Syrisch-römisches Rechtsbuch aus dem fünften Jahrhundert*, Leipzig, 1880. (German translations of the various versions began to be published by SACHAU in 1907 at Berlin.)

— **Vatican Fragments:**

GIRARD, *Textes*<sup>3</sup>, pp. 482–542.  
KRUEGER–MOMMSEN–STUEDEMUND, *Collectio*, etc., vol. iii.

**III. Texts of Leges Rom. Barbarorum:—**

CANCIANI, *Barbarorum leges antiquae*, 5 vols., Venice, 1781–92.

HAENEL, *Lex Romana Visigothorum* (Breviary of Alaric), Leipzig, 1849.

**IV. Other Roman law citations:—**

HEXABIBLOS, 1, 1 *De legibus*, 4.

**V. Modern references:—**

A GENERAL SURVEY (vol. i, *Continental Legal Hist. Series*, Boston, 1912), pp. 3–19.

AMOS, *Rom. civil law*, pp. 86–96.

BOYD, *The ecclesiast. edicts of the Theodos. Code* (vol. 24, no. 2, *Columbia Univ.*

*Studies in Polit. Science*, New York, 1905).

BUSSELL, *The Roman Empire—constitutional history*, vol. i, pp. 88–218, vol. ii, pp. 1–32, London, 1910.

COLQUHOUN, *Roman civil law*, § 58.

CROMER, *Ancient and modern imperialism*, London, 1910.

ESMEIN, *Un traité de droit syro-romain au V<sup>e</sup> siècle*, Paris, 1880.

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GIBBON, *Decline and fall of Rom. empire*, ch. 44.

GIRARD, *Manuel de droit romain*<sup>5</sup>, pp. 70–777.

GOYAU, *La tétrarchie* (in vol. i, *Études d'hist. jurid. off.* à P. F. Girard, pp. 65–84, Paris, 1913).

GREENE, *Roman law*<sup>4</sup>, pp. 9–13.

HUNTER, *Roman law*<sup>4</sup>, pp. 85–9.

KRUEGER, *Quellen*, pp. 272–322.

LEE, *The Barbarian codes*, 9 *Green Bag*, p. 428.

MACKELDEY (*Dropsie*), *Roman law*<sup>14</sup>, §§ 56–8.

MACKENZIE, *Roman law*<sup>7</sup>, pp. 20–24.

MOREY, *Roman law*, pp. 154–8.



MUIRHEAD, Roman law<sup>2</sup>, pp. 352-75.

ORTOLAN (Prichard and Nasmith, transl.), History of Roman law, §§ 83-104.

PETIT, Traité de droit romain<sup>7</sup>, §§ 45-9.

PISCANI, The Theodosian Code, 10 Green Bag, p. 309.

SOHM (Ledlie<sup>3</sup>), Roman law, pp. 112-21.

VERNAY, Note sur le changement de style dans les constitutions impériales de Dioclétien à Constantin (in vol. ii, Études d'hist. jurid. off. à P. F. Girard, pp. 263-74, Paris, 1913).

VI. See also *infra* §§ 952, 956; *supra* vol. i, §§ 124-133.

### Justinian Roman law: references.

§ 952

#### I. Text of Corpus Juris Civilis:—

The latest and best edition is:

MOMMSEN-KRUEGER-SCHOELL-KROLL, Corpus Juris Civilis, editio stereotypa, 3 vols., Berlin, 1880-1908: vol. i contains the "Institutiones" (Krueger) and "Digesta" (MommSEN), 11th edition, 1908; vol. ii, the "Codex Justinianus" (Krueger), 8th edition, 1906; vol. iii, the "Novellae," "Edicta Justiniani," and "Constitutiones dispersae" (Schoell and Kroll), 1880-95.

The following editions of parts of the Corpus Juris are deserving of special mention:

GIRARD, Textes de droit ro-

main<sup>3</sup>, pp. 607-764 (Institutes).

HAENEL, Juliani epitome latina novellarum, Leipzig, 1873.

HOLLAND, The Institutes of Justinian edited as a recension of the Institutes of Gaius, 2d ed., Oxford, 1881. (Distinguishes Gaius in the work of Justinian by the use of heavier type.)

MOYLE, Imperatoris Justiniani Institutiones, 5th ed., Oxford, 1912 (also edited as a recension of Gaius).

#### II. Translations of the Corpus Juris Civilis:—

There are complete French and German translations of the Corpus Juris. There is no complete English translation.

(§952) (a) **French:**

HULDT-DAUBANTON-TISSOT-BERENGER-BERTHELOT, *Les Institutes, le trésor de l'ancienne jurisprudence romaine, le Code, les Pandectes, les Nouvelles de Justinien* (there is no general title to the French translation of the *Corpus Juris*—each part bears a separate title), Metz or Paris, 1804–11. The French translation is of the Florentine and other MSS., prior to the labor of Mommsen and other 19th century editors of these MSS.

ORTOLAN, *Les Institutes de Justinien*<sup>8</sup>, 2 vols., Paris, 1870.

(b) **German:**

OTTO-SCHILLING-SINTENIS, *Corpus Juris Civilis*, 7 vols., Leipzig, 1830–33.

(c) **English:**

— **Institutes:** The latest translation of the *Institutes* is by MOYLE, *Institutes of Justinian*, 4th edition, Oxford, 1906. Other translations of the *Institutes* are: ABDY and WALKER, Cambridge, 1876. COOPER, New York, 1841.

CROSS (see pp. 1118–22 of Hunter, *Roman law*<sup>4</sup>, London, 1903).

CUMMIN, London, 1865.

GRAPEL, Cambridge, 1885.

HARRIS, London, 1761.

MEARS, *Institutes of Gaius and Justinian*, London, 1882.

SANDERS, London, 1853. (Virtually a translation of Ortolan's French translation.)

— **Digest:**

The three prefatory Constitutions to the Digest ("Deo auctore," "Omnem rei publicae," "Tanta") and books 1–15 inclusive, are translated by MONRO, *Digest of Justinian*, 2 vols., Cambridge, 1904–9. Fragmentary titles of books 16–50 of the Digest have been translated by the following:

DIG. 17, 1 *Mandati vel contra*, by WALKER, pp. 9–80, (1879).

— 18, 1 by MACKINTOSH in his "Roman law of sale," Edinburgh, 1907.

— 19, 1 by MACKINTOSH, Id.

— 19, 2 *Locati conducti*, by MONRO, pp. 1–75 (1891).

— 20 (all), by JACKSON, pp. 43–98 (1908).

— 39, 1, fr. 1 and 5, WARE, "Roman water law," 1905.

- 39, 2, fr. 24 and 30 by WARE, Id.
  - 39, 3, fr. 1-26, by WARE, Id.
  - 41, 1 De acquirendo rerum dominio, by Walker.
  - 41, 1, fr. 14-16, 29-30, 56 and 65 by WARE, Id.
  - 41, 2 De adq. vel amitt. poss. by WALKER.
  - 41, 2, fr. 13 by WARE, Id.
  - 41, 10, fr. 2 by WARE, Id.
  - 43, 8, fr. 2-5 by WARE, Id.
  - 43, 10, fr. 1 by WARE, Id.
  - 43, 12, fr. 1-4 by WARE, Id.
  - 43, 13, fr. 1 by WARE, Id.
  - 43, 14, fr. 1 by WARE, Id.
  - 43, 15, fr. 1 by WARE, Id.
  - 43, 20, fr. 1-8 by WARE, Id.
  - 43, 21, fr. 1-4, by WARE, Id.
  - 43, 22, fr. 1 by WARE, Id.
  - 43, 23, fr. 1-2 by WARE, Id.
  - 43, 24, fr. 11 by WARE, Id.
  - 45, 1 De verborum oblig. by TRAPNELL, pp. 76-149 (1908).
  - 47, 2 De furtis, by MONRO, pp. 1-115 (1893).
- KELLY, *Essentials of the Roman Civil Law*, being a selection of titles from the Pandects of Justinian translated into English, Chicago, 1904.

**Code:**

(§952)

Fragmentary titles of the Code have been translated by the following:

- CODE, 3, 34, 1, 2-7, 10 and 12 by WARE, Id.
- 3, 35, 1, 1-2 by WARE, Id.
- 11, 42, 1, 1-4 and 6-11, by WARE, Id.

**Novels:**

These novels have been translated: Nov. 118 and 127, by MEARS, in his *Institutes of Gaius and Justinian*, London, 1882.

**III. Roman law citations:—**

For a comparison of the titles of the Theodosian and Justinian Codes, showing how the latter borrowed from the former, see MOMMSEN-MEYER edition of Theodosian Code I, 1, pp. xiii et seq.

**(a) Justinian:**

- INST. Prooemium (Preface)—among Eng. transl. MOYLE<sup>4</sup>.
- DIG. Prefatory Constitutions "Deo auctore" (also repeated in COD. 1, 17, 1), "Tanta" (repeated COD. 1, 17, 2) — Eng. transl. by MONRO, *Digest*, vol. i, pp. xiii-xvii, xxv-xxxvi.
- COD. Prefatory Constitutions "Haec quae necessario,"

- (§952) "Summa rei publicae," "Cordi nobis" (in vol. ii, Mommsen, etc. edition of Corpus Juris Civ.).
- CONST. DISPERSAE, 7 and 8 (in vol. iii, Mommsen, etc., edition of Corpus Juris Civ., appendix ii to the Novels).
- (b) **Post-Justinian:**
- INST. THEOPH. Prooemium (preface).
- IV. Modern references:—**
- A GENERAL SURVEY, etc. (vol. i, Continental Legal History Series, Boston, 1912), pp. 19-22.
- AMOS, Roman civil law, pp. 96-102.
- APPLETON, Des interpolations dans les Pandectes, Paris, 1894.
- Le fragment 16, D., xii, 4 (in 36 Revue gén. du droit, pp. 481-543).
- AUSTIN, Jurisprudence<sup>3</sup>, vol. ii, pp. 625-41 (lecture 36).
- BIENER, Geschichte der Novellen Justinian's, Berlin, 1824.
- BRISSONIUS, De verborum quae ad jus civile pertinent significatione (ed. Heineccius), Magdeburg, 1743.
- BUSSELL, The Roman Empire — const. hist., vol. i, pp. 218-45, vol. ii, pp. 33-6, London, 1910.
- CARLYLE, Medieval political theory, vol. i, pp. 71-7, London, 1903.
- COLLINET, Études historiques sur le droit de Justinien, vol. i, Paris, 1912.
- COLQUHOUN, Roman law, §§ 59-70.
- DIEHL, Justinien (1901).
- DIRKSEN, Manuale juris civilis, Berlin, 1837.
- ECKERT, Chrestomathie, Heidelberg, 1853.
- GIBBON, Decline and fall of the Roman Empire, ch. 44.
- GIRARD, Manuel de droit romain<sup>5</sup>, pp. 77-82.
- GRADENWITZ, Interpolationen in den Pandekten, Berlin, 1887.
- GREENE, Roman law<sup>4</sup>, pp. 13-15.
- GUIZOT, History of civilization in France, lecture 11.
- HADLEY, Roman law, pp. 1-24.
- HESS, Achtzehn Civilrechtsfälle, Coburg, 1874.
- HEUMANN, Handlexikon zu den Quellen des röm. Rechts<sup>8</sup>, Jena, 1895.
- HOLMES, The age of Justinian, etc, 2 vols., London, 1905-7.
- HOWE, Studies in the Civil Law<sup>2</sup>, pp. 64-72.
- HUNTER, Roman law<sup>4</sup>, pp. 90-93.
- KRUEGER, Quellen, etc., pp. 322-47, 353-9, 370-89.

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- V. See also *infra* § 956; *supra* vol. i, §§ 134-43.

## § 953 Influence of Christianity on Roman law: references.

- I. Texts of Roman law: —** Mommsen-Meyer, Id., pp. 101-3).
- (a) **Ante-Justinian:**
- COD. THEOD. 1, 27 De episcopali ordinatione. — 18 De Manichaeis (2 Mommsen-Meyer, Id., pp. 103-5).
- 5, 9 De expositis. — 35 De episcopali judicio, etc. (2 Mommsen-Meyer, Id., pp. 142-52).
- 5, 10 De . . . sanguinolentos emptos, etc. NOV. MARJORIAN, 11 De episcopali judicio, etc. (2 Mommsen-Meyer, Id., pp. 176-8).
- 9, 45 De his qui ad ecclesias confugiunt. NOV. MARCIAN, 5 De testament clericorum (2 Mommsen-Meyer, Id., pp. 193-6).
- 16, 1 De fide catholica.
- 16, 2 De episcopis, eccles. et clericis.
- 16, 3, De monachis.
- 16, 4, De . . . super religione contendunt.
- 16, 5 De haereticis.
- 16, 6, Ne sanctum baptismum iteretur.
- 16, 7 De apostatis.
- 16, 8 De Judaeis, caelicis et Samaritanis.
- 16, 9 Ne Christianum mancipium Judaeus habeat.
- 16, 10 De paganis . . . et templis.
- 16, 11 De religione.
- CONST. SIRMUNDIAN. (Appendix Mommsen-Meyer edition Theodosian Code, 1, 2, pp. 907 et seq.), 1-16.
- NOV. THEOD. 3 De Judaeis, Samaritanis, haereticis et paganis (Mommsen-Meyer, Id. vol. 2, pp. 7-11).
- NOV. VALENTINIAN. 17 De episcopis ordinatione (2
- (b) **Justinian:**
- COD. 1, 1 De . . . trinitate et de fide catholica.
- 1, 2 De . . . ecclesiis, etc.
- 1, 3 De episcopis et clericis et orphanotrophis, etc.
- 1, 4 De episcopali audientia, etc.
- 1, 5 De haereticis et Manichaeis et Samaritanis.
- 1, 6 Ne sancta baptismum iteretur.
- 1, 7 De apostatis.
- 1, 8 Nemini licere signum salvatoris Christi . . . vel in marmore aut sculpare aut pingere.
- 1, 9 De Judaeis et caelicis.

- 1, 10 Ne Christianum mancipium haereticus vel paganus vel Judaeus habeat etc.
- 1, 11 De paganis . . . et templis.
- 1, 12 De his qui ad ecclesias confugiunt, etc.
- 1, 13 De his qui in ecclesiis manumittuntur.
- 4, 56 Si mancipium ita venerit, ne prostituatur.
- 8, 51 (52) De infantibus expositis et de his qui sanguinolentos emptos nutriendos acceperunt.
- 9, 17 De his qui parentes vel liberos occiderunt.
- 11, 44 (43) De gladiatoribus penitus tollendis.
- Nov. 3 Ut determinatus sit numerus clericorum sanctissimae majoris ecclesiae . . . Constantinop., etc.
- 5 De monachis.
- 6 Quomodo oporteat episcopos et reliq. cleric. ad ordinationem deduci, etc.
- 7 De non alienandis . . . eccles. rebus, etc.
- 9 Ut ecclesia Romana centum annorum habeat praescriptionem.
- 11 De privilegiis archiepiscopi primae Justinianae.
- 16 De mensura ordinand. cleric.
- 37 De Africana ecclesia.
- 40 Ut ecclesia sanctae (§952) resurrectionis possit alienare habitacula, etc.
- 42 De depositione Anthimi, etc.
- 45 Ut haeretici, etc.
- 46 De ecclesiast. immobil. rerum alienatione, etc.
- 56 Ut ea quae vocantur insinuativa super clericis, etc.
- 57 Ut clerici, etc.
- 58 Ut in privatis domibus sacra mysteria non fiant.
- 65 De alienatione rer. ecclesiae Mysiae relict. pro captivorum redemptione, etc.
- 67 Ut nullus fabricet oratorii domum praeter voluntatem episcopi, etc.
- 76 De his qui ingrediuntur in monasterium, etc.
- 77 Ut non luxurietur contra naturam neque juretur, etc.
- 79 Apud quos oporteat causam dicere monachos et ascetrias.
- 81 Const. quae dignitatibus et episcopatu liberat filium patria potestate.
- 83 Ut clerici apud . . . episcopos primum conveniantur et post haec apud civiles judices.
- 86 Ut differentes judices audire interpellantium al-

(§953) legationes cognatur ab episcopis, etc.

— 109 De privilegiis dotis haereticis mulieribus non praestandis.

— 123 De sanctissimis et . . . episcopis et clericis et monachis.

— 129 De Samaritis.

— 131 De ecclesiasticis titulis.

— 132 De interdictis collectis haereticorum.

— 133 Quomodo oportet monachos vivere.

— 137 De creatione episcoporum et clericorum.

— 144 De Samaritis.

EDICTA (appendix i to vol. iii, Mommsen-Krueger, etc., Corpus Juris Civilis), 2, Ne praesides in fiscalibus asyli jus.

CONST. DISPERSAE (appendix ii to vol. iii, Id.), 2-3.

### (c) Post-Justinian:

PROCHIRON, 28 De ordinatione episcoporum et presbyterorum.

EPANAGOGA, 3 De patriarcha.

— 8 De episcopo . . . ordinatione et nominatione.

— 9 De episcopis et presbyteris, etc.

BASILICA, 1, 1 De summa trinitate et fide catholica.

— 3, 1 De episcopis et

clericis et ordinatione et privilegiis eorum.

— 3, 2 De numero clericorum magnae ecclesiae Constantinop., etc.

— 3, 3 De clericis ex una ecclesia in alteram transferendis, etc.

— 3, 4, De clericis, qui a sua ecclesia discedunt, etc.

— 4, 1 De monasteriis, etc.

— 5, 1 De ecclesiis et monasteriis, etc.

— 5, 2 De alienatione . . . rer. ecclesiast.

— 5, 3 De ecclesiasticis canonibus et privilegiis eorum.

— 6, 22 Ut praesides interpellantis jura audire cunctantes ab episcopis, etc.

— 19, 17 De ancilla ita vendita, ne prostituatur.

— 31, 5 Const. quae per dignitates et episcopatum filios patria potestate liberat.

— 33, 2 De infantibus expositis . . . et de his qui sanguinolentos emerunt, etc.

— 60, 50 De quaestione.

— 60, 58 De raptore virginum vel viduarum nec non sanctimonialium.

HEXABIBLOS (Preface of Harmenopulos), Judicum praeparatio sive justitia,



- 2, 5 De muneribus, etc.
- 2, 9 De iis qui confugium quaerunt.
- 4, 5 De civili matrimonii rigore.
- 5, 4 De testamento episcoporum et monachorum.
- 6, 11 De Judaeis, paganizantibus et haereticis.
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- III. See also *infra* § 1026; *supra* vol. i, §§ 144-53.

§ 954 **Roman law schools and legal education: references.**

**I. Texts of Roman law:—**

(a) **Ante-Justinian:**

COD. THEOD. 6, 21 De professoribus, etc.

— 13, 3 De medicis et professoribus.

— 14, 9 De studiis liberalibus urbis Romae et Constantinop.

(b) **Justinian:**

CODE, 2, 7 De advocatis divers. judiciorum.

— 10, 50 (49) Qui aetate se excusent, 1.

— 10, 53 (52) De professoribus et medicis.

— 11, 19 (18) De studiis liberalibus urbis Romae et Constantinop.

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"Digest," vol. i, pp. xviii-xxiv, and also by Ortolan "History of Roman law," § 573).

(c) **Post-Justinian:**

BAS. 6, 26 De archiatri et professoribus, etc.

— 8, 1 De postulando (especially fr. 26).

— 54, 2 . . . De his, qui studiorum causa in aliena civitate degunt.

**II. Modern references:—**

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GIRARD, *L'enseignement du droit romain* (in *Nouvelle revue historique de droit français et étranger*, Sept.-Oct. 1912); also, *The teaching of Roman law*, 13 *Journal of Comparative Legisl. N. S.*, part 2, p. 171 (no. 28, July, 1913).

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III. See also *infra* §§ 1019, 1024; *supra* vol. i, §§ 154-65; vol. ii, § 906.

**Post-Justinian Roman law: references.**

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**I. Texts:—**

**(a) Theophilus' Institutes:**

FERRINI, *Institutionum graeca paraphrasis Theophilo*, etc., 2 vols., Berlin, 1897 (Greek text with Latin translation).

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**(b) Ecloga:**

ZACHARIAE (VON LINGENTHAL), *Collectio librorum juris Graeco-Romani ineditorum*, pp. 1-52, "Ecloga Leonis et Constantini," Leipzig, 1852 (Greek text).

— *Prochiron* (*Prolegomena*, ch. 2), Heidelberg, 1837. (Contains Latin transl. of preface of *Ecloga* and a Latin list of its titles.)

**(c) Prochiron:**

ZACHARIAE, etc., *Imperatorum Basilii, Constantini et Leonis Prochiron*, Heidel-

(§955) berg, 1837 (Greek text with Latin translation).

(d) **Epanagoga:**

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(e) **Basilica:**

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(f) **Hexabiblos:**

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(g) **Other post-Basilica texts:**

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IV. See also *infra* §956; *supra* vol. i, §§ 166–83.

### § 956 Roman law of the Later Empire: references.

#### I. Texts of Roman law: —

##### (a) Ante-Justinian:

COD. THEOD. 1, titles 5, 8–11, 13, 15–17, 28. These treat of the office of praefectus praetorio, quaestor, magister officiorum, comes sacrarum largitionum, comes rei privatae, comes Orientis, vicarius, rector, defensor, senatus.

— 6, titles 2–9, 16, 19–20, 22, 37–8. These treat of the office or dignity of senator, praetor, quaestor, consul, praefectus, magister militum, patricius, praefectus urbi or praetorio, praepositus sacri cubiculi, magister officiorum, comes sacrarum largitionum, comes rei privatae, comes sacri palatii, consularis, praeses, eques, perfectissimus.

— 15, 4 De imaginibus imperialibus.

NOV. VALENTINIAN. 11 De honoratis, etc. (Mommsen-

Meyer edition of Cod. Theod., vol. ii, p. 93).

— 22, De officio praefect. praetorio. (2 Mommsen-Meyer, Cod. Theod., p. 113.)

##### (b) Justinian:

CODE, 1, titles 26–7, 29–34, 36–42, 44. These treat of the office of praefectus praetorio, magister militum, quaestor, magister officiorum, comes sacrarum largitionum, comes rei privatae, comes sacri patrimonii, comes Orientis, praefectus Augustalis, vicarius, praetor, rector, praefectus annonae.

— 3, 24 Ubi senatores vel clarissimi, etc.

— 11, 9 (8) De vestibus . . . auratis, etc.

— 11, 20 (19) De honoratorum vehiculo.

— 11, 21 (20) De privilegiis urbis Constantinop.

— 11, 66 (65) De fundis rei privatae . . . divinae domus.

— 11, 67 (66) De fundis . . . rei domenicæ.

— 12, titles 1-6, 8-10, 12-13, 31 (32), 52 (53), 53 (54). These treat of the office or dignity of praetor, consul, praefectus, magister militum, patricius, praefectus praetorio, praepositus sacri cubiculi, quaestor, magister officiorum, comes sacrarum largitionum, magister scriniorum, comes consistorianus, comes rei militaris, comes provinciae, equestrian, apparitores praefectus praetorio or praefectus urbi.

NOVELS 13, 24-30, 31, 62, 71, 102, 103-5. These treat of the office or dignity of praetor, comes, moderator, proconsul, praeses, senator, illustris, clarissimus, consul.

— 134 Ut nulli iudicum liceat habere loci servatorum.

### (c) Post-Justinian:

EPANAGOGA, titles 2, 4-6.

These treat of the office of emperor, praefectus urbi,

quaestor, and other magistrates.

BAS. 2, 5 De precibus imperatori, etc.

— 2, 6 De principibus et . . . constitutionibus, et rescriptis, etc.

— 6, titles 2-6, 8-19, 21, 23, 25-31, 33-4. These treat of the office or dignity of consul, proconsul, legatus, praeses, praefectus urbi, praefectus praetorio, praefectus vigilum, praetor plebis, quaestor, praetor, comes, moderator, defensor, vicarius, procurator, rationalis, logotheta, praepositus sacri cubiculi, notarii, archiatri, professor, domesticus sacrarum scriniorum, protector, agens, curator cursus, palatinus, decanus, mensor, eques.

HEXABIBLOS, Appendix, title 1 De dignitatibus.

II. See also supra §§ 951, 952, 955; infra § 1021; supra vol. i, §§ 120-23, 184; vol. ii, §§ 873-907.

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### § 958 Mohammedan countries: references.

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- RATTIGAN, Scientific study of Mohammedan law, 17 *Law Quart. Rev.*, p. 402.
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- SEE also infra (a)-(g); supra vol. i, §§ 187-92.



(b) **Turkey:**

**I. Codes, etc., and translations:—**

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- III. See also *supra* §§ 963, 967, 977; vol. i, §§ 361-412.



## CHAPTER II

### SUBJECT-GUIDE TO VOL. II:

#### LISTS OF THE PERTINENT TEXTS OF ROMAN LAW AND OF THE PRINCIPAL MODERN CODES; REFERENCES TO PERTINENT MODERN LEGAL LITERATURE

**Periods, terms, and general principles of Roman law: refer- § 983  
ences.**

- I. Texts of Roman law:—**
- For English translations,  
see supra §§ 945, 946, 948,  
951, 952, 955.
- (a) **Ante-Justinian:**
- XII TABLES, 1, 1; ix, 6; xii, 5.  
GAIUS, 1, 1-8.  
ULPIAN, Reg. 1, 1-4.  
COD. THEOD. 1, 1 De con-  
stitution. principum, etc.  
— 1, 2 De . . . rescriptis.  
— 1, 3 De mandatis prin-  
cipum.  
— 1, 4 De responsis pru-  
dent.  
— 5, 20 De longa con-  
suetud.  
NOV. VALENTIN. 4 In . . .  
rescriptum, etc.
- (b) **Justinian:**
- INST. 1, 1, De justitia, etc.  
— 1, 2 De jure natural., etc.
- DIG. 1, 1 De justitia, etc.  
— 1, 3 De legibus, etc.  
— 1, 4 De const. principum.  
— 1, 5 De statu.  
— 22, 6 De juris et facti  
ignorantia.  
— 50, 16 De verb. signif.  
— 50, 17 De . . . regulis,  
etc.  
CODE, 1 14 De legibus et  
const. principum, etc.  
— 1, 15 De mandatis prin-  
cipum, etc.  
— 1, 16 De senatusconsult.  
— 1, 18 De juris et facti  
ignorantia.  
— 1, 23 De . . . rescript.  
et pragmat. sanction.  
— 6, 38 De verb. . . .  
signif.  
— 8, 52 (53) . . . Longa  
consuetud.  
Nov. 17 De mandatis prin-  
cipum.

- (§983) — 131 De ecclesiastic., etc.
- (c) **Post-Justinian:**
- THEOPHILUS, 1, 1 De justitia, etc.
- 1, 2 De jure naturale, etc.
- EPANAGOGA, 1 De jure et just.
- BAS. 2, 1 De just. et jure et longa consuetud.
- 2, 2 De verb. signif.
- 2, 3 De . . . regulis, etc.
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- 1, 1 De legibus.
- 1, 13 De mulieribus.
- 1, 15 De obscuro et ambiguo.
- appendix 2, De . . . regulis.
- appendix 3, De signif. verb.
- Leges agrariae, praefatio.
- II. **Modern references:—**
- (a) **In general:**
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- CHILE, 1-18, 52-3.
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- PHILIPPINES, 2-11, 16.
- PORTO RICO, 1-21.
- QUEBEC, 10-15, 17.
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(b) **Modern codes:**

References are to the Civil Code, unless otherwise stated.

III. See also *supra* §§946-51, 955; vol. 1, §§ 29-51, 53-133, 135-9, 166-84, 189, 194-5; vol. ii, §§ 413-27.

**Freedom and slavery: references.**

§ 984

I. **Texts of Roman law:—**

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, v. 8-11; vi, 6.

GAIUS, 1, §§ 9-54, 82-92; 3, §§ 39-76.

PAULUS, *Sent.* i, 1a, 2, 4 and 6a; ii, 9, 21a, and 24, 1-4; ii, 32; iii, 2 and 3; iv, 10, 12, 13, 13a, 14, 14a; v, 10, 13, 16, 30b.

ULPIAN, *Reg. titles* 1, 2, 27, 29.

COD. GREGORIAN. *De bonis libert. Caesaris.*

COD. HERMOGENIAN. *De*

*eorum contract. qui alieno juri subjecti sunt.*

—Ad SC. Claudianum.

COLLATIO MOSAIC. ET ROM. title 3 *De jure et saevitia dominorum.*

COD. THEOD. ii, 31, 32; iv, 7-10, 12; v, 8, 16; ix, 6 and 9; x, 12; xi, 3; xiv, 18, xv, 8; xvi, 9.

CONST. SIRMONDIAN, 5.

NOV. ANTHEMIUS, 1.

—VALENTINIAN, 25 and 33.

(b) **Justinian:**

INST. i, 3-8; iii, 7-8, 11, 17.

DIG. i, 5-6; xi, 1-2; xv, 1-4; xxv, 3; xxxviii, 1-5; xl, 1-16; xliii, 29, 31, 32; xlv, 3; xlvii, 4; xlviii, 15.

- (§984) CODE, i, 13, 25; ii, 30 (31);  
 iii, 22, 42; iv. 13, 14, 26, 27,  
 36, 42, 55-8; vi, 1-8; vii,  
 1-24; viii, 8, 51, (52); ix,  
 11, 14, 20, 21; x, 33 (32),  
 58 (56); xi, 41 (40), 63 (62),  
 64 (63), 68 (67); xii, 33 (34).  
 Nov. 32-4, 78.

(c) **Post-Justinian:**

THEOPHILUS, i, 3-8; iii, 7-8,  
 11, 17.

ECLOGA, 8.

PROCHIRON, 23 and 34.

EPANAGOGA, 37.

BAS. vii, 15; x, 13; xvi, 7;  
 xviii, 1-3, 5-8; xix, 7, 17;  
 xxiv, 4, 5; xxxi, 1, 2, 6;  
 xxxiii, 2; xxxiv, 2; xxxv,  
 13, 16; xl, 7; xliii, 3; xliv,  
 6, 11; xlvi, 1; xlviii, 1-26;  
 xlix, 1-6; lv, 11; lx, 6, 7,  
 13, 47, 48, 59.

HEXABIBLOS, i, 14, 18; v, 3;  
 vi, 12, 13; *Leges agrariae*,  
 9.

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 412-89.

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DEMANGEAT, *Droit romain*,  
 pp. 148-220.

DESSERTAUX, *Le cas de la  
 femme d'Arretium* (Mé-

langes Gérardin, pp. 181-  
 96, Paris 1907).

DEURER, *Gesch. und Inst.  
 des röm. Rechts*, § 104.

FOWLER, *Social life at Rome  
 in the age of Cicero*, pp.  
 204-36, New York, 1909.

GIRARD, *Manuel de droit  
 romain*<sup>5</sup>, pp. 93-103.

HUNTER, *Roman law*<sup>4</sup>, pp.  
 157-86.

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 64.

MACKELDEY (*Dropsie*), *Ro-  
 man law*<sup>14</sup>, §§ 131, 132.

MAREZOLL, *Lehrbuch*, etc., §§  
 154-70.

PELLISON, *Roman life in  
 Pliny's time*, pp. 80-110,  
 New York, 1897.

PETIT, *Traité de droit ro-  
 main*<sup>7</sup>, §§ 63-5, 258-9, 477.

PULCIANO, *Il diritto romano  
 nell' Epist. di Plinio*, etc.,  
 Turin, 1913.

SAVIGNY, *System*, vol. viii,  
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 ery in Roman law*, 40 *Am.  
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 "Ingenuus", "Libertus",  
 "Manumissio", "Servus".

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 pp. 165 et seq.

TAYLOR-TASWELL, *Greek and  
 Roman jurisprudence in re-  
 lation to slavery*, 4 *Law  
 Mag. and Rev.*, p. 189.

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vol. ii.

III. See also *infra* § 1021;  
supra vol. i, § 58; vol. ii,  
§§ 432, 434-40, 452.

### Citizenship: references.

§ 985

#### I. Texts of Roman law: —

For English translations, see  
supra §§ 945, 946, 948, 951,  
952, 955.

##### (a) Ante-Justinian:

XII TABLES, vi, 5.

LEX Antonia, etc.,

— municipii Tarentini,

— Julia municipalis,

— Rubria de Gallia Cisal-

pina: all four leges are  
translated by HARDY, *Six*  
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GAIUS, 1, §§ 18, 28-35, 65-81,  
88-96, 160.

PAULUS, *Sent.* i, 1a, 9-30; v,  
30b.

ULPIAN, *Reg.* title 3.

COD. THEOD. iv, 23; v, 17-19;  
xi, 24; xii, 19; xiii, 3-9;  
xiv, 10, 12, 13, 15.

NOV. MARJORIAN. 8.

— VALENTINIAN. 9-11, 31

##### (b) Justinian:

INST. 1, 5, § 3.

DIG. 50, titles 1, 4-6.

CODE, vii, 5-6; x, 17, 18, 38  
(37)-40 (39), 43 (42), 48  
(47)-57 (56), 60 (58), 64  
(62)-73 (71); xi, 22 (21),  
47 (46)-54 (53), 56 (55), 58  
(56), 63 (62), 64 (63), 68  
(67), 69 (68).

NOV. 156, 157, 160.

CONST. DISPERSAE (in appen-  
dix to NOV.) 1, 6, 9.

##### (c) Post-Justinian:

THEOPHILUS, 1, 5, § 3.

BAS. xlv, 2; liv, 1-7, 34; lv,  
1-5, 7-9, 11-13; lx, 19.

HEXABIBLOS, i, 13; ii, 5, 7;  
vi, 8; *Leges agrariae*, 1-3.

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ARNOLD, *Roman provincial ad-*  
*ministration*<sup>2</sup>, pp. 11-12, 62,  
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397, 401, New York, 1909.

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212, etc., Paris, 1913.

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commercial societies, 15  
*Harv. Law Rev.*, p. 60.

COLQUHOUN, *Roman law*,  
§§ 371-400.

CUQ, *Institutions jurid. des*  
*romains*, vol. ii, p. 71.

FRONTINUS, *De coloniis Ital-*  
*iae*.

GIRARD, *Manuel de droit*  
*romain*<sup>5</sup>, pp. 104-34.

HADLEY, *Roman law*, p.  
104.

- HEINECCIUS, *Antiq. Rom. syntagma*, appendix, book i, ch. i-iv.
- HUNTER, *Roman law*<sup>4</sup>, pp. 186-8.
- INVREA, *Ricerche di diritto pub. romano nelle vite . . . di Suetonio* (excerpt from the *Filangieri* of 1913).
- JUSTER, *La condition légale des Juifs sous les rois visigoths* (in vol. ii, *Études d'hist. jurid. off. à P. F. Girard*, pp. 275-336, Paris, 1913).
- LEAGE, *Roman law*, pp. 64-6.
- MACKELDEY (*Dropsie*), *Roman law*<sup>14</sup>, §§ 43, 131-2.
- MACKENZIE, *Roman law*<sup>7</sup>, pp. 76, 79.
- MADVIG, *De jure et conditione coloniarum*.
- MARQUARDT, *Röm. Staatsverwaltung*, I, pp. 18-425.
- MAY, *Droit romain*, pp. 77-84.
- MOMMSEN, *Röm. Staatsrecht*, book iii.
- MOREY, *Roman law*, pp. 47-58.
- MOYLE, *Inst. of Justinian*, vol. i, 5th ed., pp. 26, 116-18.
- PETIT, *Traité de droit romain*<sup>7</sup>, §§ 66-77.
- POSTE, *Gaius*<sup>4</sup>, pp. 28, 31, 60, 93-7, 296, 305, 308.
- PULCIANO, *Il diritto romano nell' Epist. di Plinio*, etc., Turin, 1913.
- ROBY, *Roman private law*, vol. i, pp. 36-46.
- SANDS, *Client princes of the Roman Empire*, Cambridge, 1906.
- SAVIGNY, *System*, etc., vol. ii, §§ 64, 66.
- SOHM (*Ledlie*<sup>3</sup>), *Roman law*, pp. 110, 173-6, 178, 180.
- WALTER, *Geschichte des röm. Rechts*, i, §§ 99-270.

III. See also *supra* § 984, *infra* § 987; *supra* vol. i, § 58; vol. ii, §§ 432, 437-44, 452-3.

§ 986 **Emancipation, majority, *venia aetatis*, and *in integrum restitutio*: references.**

I. **Texts of Roman law:—**

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

GAIUS, 1, §§ 129-32.

PAULUS, *Sent.* 1, 7 *De integri restitutione*.

—1, 9 *De minoribus xxv ann.*

—1, 9a (on *in integrum restit.*).

ULP. *Reg.* 10 *Qui in potestate . . . liberentur*.

- COD. GREGORIAN. 2 Si adv. donationes . . . in integrum restit.
- 3 Si major, etc.
- COD. THEOD. 2, 16 De integri restitutione.
- 2, 17 De his qui veniam aetatis impetrarunt.
- 3, 32 De praediis minorum, etc.
- 8, 14 De ingratiss liberis.
- (b) **Justinian:**
- INST. 1, 12, §§ 5-6.
- DIG. 4, 1 De integrum restitutionibus.
- 4, 4 De minoribus xxv annis.
- 4, 6 Majores xxv annis in integrum restit.
- 37, 8 De conjung. cum emancipato, etc.
- CODE, 2, 21 (22) De integrum restit. minor. xxv annis.
- 2, 22 (23) De filio fam. minore.
- 2, 23 (24) De fidejussor. minorum.
- 2, 24 (25) Si tutor vel curator, etc.
- 2, 25 (26) Si . . . in integrum restitutio, etc.
- 2, titles 26 (27)-41 (42) relate to in integrum restitutio.
- 2, 42 (43) Si minor se majorem dixerit, etc.
- 2, 43 (44) Si saepius in (§986) integrum restitutio postuletur.
- 2, 44 (45) De his qui veniam aetatis impetraverunt.
- 2, 45 (46) Si major factus raturum habuerit.
- 2, titles 46(47)-52(53) relate to in integrum restitutio.
- 2, 53 (54) Quibus ex causis majores in integr. restitutio.
- 2, 54 (55) De alienatione judicii, etc. (in integr. restit.).
- 4, 13 Ne filius pro patre vel pater pro filio emancipato, etc.
- 5, 39 Quando . . . minores, etc.
- 5, 40 Si . . . pro minore, etc.
- 5, 71 De praediis vel aliis rebus minorum, etc.
- 5, 73 Si quis ignorans rem minoris, etc.
- 5, 74 Si major factus, etc.
- 8, 48 De emancipation. liberorum.
- 8, 49 (50) De ingratiss liberis.
- Nov. 72 Ut . . . res minorum, etc.
- (c) **Post-Justinian:**
- THEOPHILUS, 1, 12 §§ 5-6.

- (§986) PROCHIRON, 26 De emancipatione.  
 — 31 De restitutione.  
 BAS. 10, titles 1-24 relate to in integrum restitutio.  
 — 10, 25 Si minor se majorem dixerit, etc.  
 — 10, 26 Si saepius in integrum restitutio postuletur.  
 — 10, 27 De his qui veniam aetatis impetraverunt.  
 — 10, 28, Si major factus, etc.  
 — 10, titles 29-34 relate to in integrum restitutio.  
 — 10, 35 Quibus ex causis majores xxv annis in integrum restit.  
 — 10, 36 Quibus ex causis majores in integrum restit.  
 — 10, 37 De judicii mutatione (in integrum restit.).  
 — 31, 3 De emancipatione, etc.  
 — 37, 9 Ex . . . facto . . . minores, etc.  
 — 40, 6 Si a parentibus quis emancipatus, etc.  
 HEXABIBLOS, 1, 12 De im-  
 puberibus et minoribus,  
 aequae in integrum restit.  
 — 1, 17 De potestatis patri-  
 aiae dissolutione.  
 Leg. Hist. Series, Boston,  
 1912), pp. 198, 258-66.  
 COLQUHOUN, Roman law, §§  
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 1135, 1145, 1270, 1511,  
 1865-81, 2055-61, 2183.  
 GIRARD, Manuel de droit  
 romain<sup>5</sup>, pp. 181-3, 189-  
 92, 229-34.  
 HUNTER, Roman law<sup>4</sup>, pp. 41,  
 212-14, 593, 608-9, 743, 991,  
 1028.  
 MACKELDEY (Dropsie), Ro-  
 man law<sup>14</sup>, §§ 138, 174, 178,  
 220-33, 610-13, 642.  
 MACKENZIE, Roman law<sup>7</sup>, pp.  
 74, 141, 154, 155, 263.  
 MOYLE, Inst. of Justinian,  
 vol. i, 5th ed. pp. 145, 563-  
 7, 602.  
 PETIT, Droit romain<sup>7</sup>, §§ 97,  
 103, 124, 130, 811.  
 POSTE, Gaius<sup>4</sup>, pp. 80, 114-  
 16, 193.  
 ROBY, Roman private law,  
 vol. i, pp. 77, 123; vol. ii,  
 pp. 259, 262.  
 SAVIGNY, System, vol. iii, §  
 106 (4); vol. vii, §§ 322-  
 43.  
 SOHM (Ledlie<sup>3</sup>), Roman law,  
 pp. 57, 58, 181, 210, 294-  
 6, 486-8, 541.

## II. Modern references:—

- AMOS, Roman law, pp. 108,  
 363.  
 BRISSAUD, History of French  
 private law (vol. iii, Cont.

- III. See also *infra* § 992 (pa-  
 ternal power) and § 993  
 (guardianship); *supra* vol.  
 ii, §§ 437, 446-9.



**Birth, natural death, civil death, infamia or existimationis § 987  
minutio, proof of life and death: references.**

**I. Texts of Roman law: —** — 1, 16 (partly on civil death).

For English translations, see — 3, 1, § 5 (civil death).  
supra §§ 945, 946, 948, 951, BAS. 21, 1 De testibus integrae  
952, 955. existimationis et infamibus.

(a) **Ante-Justinian:**

XII TABLES, viii, 22 (on in- — 21, 2 De his qui notantur  
famy). infamia.

GAIUS, 1, §§ 128, 159–64 (on — 21, 3 De . . . infamia.

civil death). — 31, 7 De ventre praeg-  
nantis inspiciendo, etc.

PAULUS, Sent. 2, 24, §§ 6–10 — 31, 8 Si mulier ventris,  
De liberis agnoscendis. etc.

(b) **Justinian:**

INST. 1, 12, §§ 1–3 (on civil — 31, 9 Si mulier ventris,  
death). etc.

— 1, 16 (partly on civil — 43, 7 De multis, quae ex  
death). condemnatione judicum  
veniunt.

— 3, 1, § 5 (civil death). — 46, 1 De statu hominum,  
etc.

DIG. 3, 2 De . . . infamia. HEXABIBLOS, 6, 9 De calum-  
niatoribus, etc.

— 34, 5 De rebus dubiis — 6, 15 De iis qui infamia  
(partly on proof of life and notantur.  
death). — 6, 16 (on infamy).

— 47, 12 De sepulchro vio-  
lato (infamy).

CODE, 2, 11 (12) De . . . in-  
famiam, etc.

— 10, 59 (57) De infamibus.

— 10, 61 (59) De his qui in  
exsilium, etc.

Nov. 60 Ut defuncti seu fun-  
era eorum non injurientur,  
etc.

(c) **Post-Justinian:**

THEOPHILUS, 1, 12, §§ 1–3  
(on civil death).

**II. Modern references: —**

AMOS, Roman law, pp. 56,  
112–13, 192.

BIWIN, De l'absence — étude  
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658, 880, 884–5.

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367.

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- GIRARD, Droit romain<sup>5</sup>, pp. 195-200, 839-40.
- GREENIDGE, Infamia in Roman law, Oxford, 1894.
- HUNTER, Roman law<sup>4</sup>, pp. 431-2.
- MACKELDEY (Dropsie), Roman law<sup>14</sup>, §§ 133 note 6, 135, 137, 153.
- MOYLE, Inst. of Justinian, vol. i, 5th ed., pp. 124-44.
- PETIT, Droit romain<sup>7</sup>, § 135.
- POSTE, Gaius<sup>4</sup>, pp. 96-7.
- SAVIGNY, System, vol. vii, §§ 326-9 (absentees).
- SOHM (Ledlie<sup>3</sup>), Roman law, pp. 182-5.
- TITANIC disaster as raising quest. of survivorship, 74 Cent. Law Journ., p. 416.
- III. See also supra vol. ii, §§ 432, 450-56.

§ 988 **Betrothal, relationship (agnation and cognation), affinity, marriage, dos, donatio ante or propter nuptias, parapherna, second marriages, concubinage: references.**

I. Texts of Roman law: —

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, iv, 4; vi, 4; xi.

GAIUS, i, 59-96, 155; iii, 10-11.

PAULUS, Sent. 2, 19 De nuptiis.

— 2, 20 De concubinis.

— 2, 21a De mulieribus . . . ad SC. Claudianum.

— 2, 21b De dotibus.

— 2, 22 De pactis inter virum et uxorem.

— 2, 23 De donation. inter vir. et ux.

— 4, 11 De gradibus.

ULPIAN, Reg. 6 De dotibus.

— 7 De . . . donation. inter vir. et ux.

— 9 De his qui in manu sunt.

— 13 De caelib. orbo, etc.

— 14 De poena legis Juliae.

— 15 De decimis.

— 16 De solidi capacitate inter vir. et ux.

COD. GREGORIAN. 2 Si adv. donationes sponsis, etc.

— 5 De sponsalibus.

— 5 De nuptiis.

— 11 (on dos).

COD. HERMOGENIAN. De nuptiis.

— De donation. inter vir. et ux.

COD. THEOD. 2, 5 De dominio rei quae . . . consor-  
tibus, etc.

— 2, 21 De inoffic. dotibus.

— 3, 5 De sponsalibus et  
ante nuptias donation.

— 3, 6 Si . . . sponsalia.

— 3, 7 De nubtiis.

— 3, 8 De secundis nubtiis.

— 3, 9 Si secundo nubserit  
mulier, etc.

— 3, 10 Si nubtiae ex  
rescripto petantur.

— 3, 11 Si . . . potestate  
nubtias.

— 3, 12 De incest's nub-  
tiis.

— 3, 13 De dotibus.

— 3, 14 De nubtiis gen-  
tilium.

— 3, 15 De fidejussoribus  
dotium.

— 8, 16 De infirmandis  
poenis caelibatus et orbitat.

COLL. MOSAIC. ET ROM. 6 De  
incestis nubtiis.

NOV. LEO AND SERVEUS, 1.

— MARCIAN. 4 De matri-  
moniis senatorum.

— MARJORIAN. 7 De curia-  
libus.

— VALENTINIAN. 14 De  
fructibus inter vir. et ux.,  
etc.

VATICAN FRAG. 94-122 De  
re uxoria et dotibus.

— 248-59 Quando dona-  
tor, etc.

(b) Justinian:

(§ 988)

INST. 1, 9 De patria potes-  
tate, 1.

— 1, 10 De nubtiis.

— 1, 15 De . . . adgna-  
torum tutela, 1.

— 2, 7 De donation., 3.

— 2, 8 Quibus alienare, etc.  
as far as § 1.

— 3, 2 De . . . adgna-  
torum successione, §§ 1-2.

— 3, 5 De successione cog-  
nat., 4.

— 3, 6 De gradibus cogna-  
tionis.

DIG. 16, 1 Ad. SC. Velleia-  
num.

— 23, 1 De sponsalibus.

— 23, 2 De ritu nuptiarum.

— 23, 3 De jure dotium.

— 23, 4 De pactis dotalibus.

— 23, 5 De fundo dotali.

— 24, 1 De donation. inter  
inter vir. et ux.

— 24, 3 Solutio matrimonio  
dos . . . petatur.

— 25, 1 De impensis in res  
dotal., etc.

— 25, 2 De actione rerum  
amotarum.

— 25, 3 De agnoscendis  
et alendis liberis, etc.

— 25, 4 De inspiciendo  
ventre custodiend. partu.

— 25, 5 Si ventris nomine  
muliere, etc.

— 25, 6 Si mulier ventris,  
etc.

- (§988) — 33, 4 De dote praelegata.  
 — 37, 7 De dotis collatione.  
 — 38, 11 Unde vir et uxor.  
 — 41, 9 Pro dote.  
 — 50, 16 De verb. signif.  
 101, 1.  
 CODE, 2, 33 (34) Si adversus  
 dotem.  
 — 3, 30 De inoff. dotibus.  
 — 4, 12 Ne uxor pro marito,  
 etc.  
 — 5, 1 De sponsalibus.  
 — 5, 2 Si . . . sponsalia,  
 etc.  
 — 5, 3 De donation. ante  
 . . . vel propter nuptias et  
 sponsaliciis.  
 — 5, 4 De nuptiis.  
 — 5, 5 De incestis et inutil.  
 nuptiis.  
 — 5, 6 De interdicto matri-  
 monio inter pupil. et tutor.  
 seu curator. liberosque eor-  
 um.  
 — 5, 7 Si . . . potestate  
 . . . nuptias.  
 — 5, 8 Si nuptiae ex re-  
 scripto petantur.  
 — 5, 9 De secundis nuptiis.  
 — 5, 10 Si secundo nupserit  
 mulier, etc.  
 — 5, 11 De dotis promissio-  
 ne, etc.  
 — 5, 12 De jure dotium.  
 — 5, 13 De rei uxoriae  
 actione, etc.  
 — 5, 14 De . . . dote . . .  
 donation. ante nuptias et  
 paraphernis.  
 — 5, 15 De dota cauta et  
 non numerata, etc.  
 — 5, 16 De donation. inter  
 vir. et ux.  
 — 5, 18 Soluta matrimonio  
 dos . . . petatur.  
 — 5, 20 Ne fidejussores  
 . . . dotium, etc.  
 — 5, 21 Rerum amotarum.  
 — 5, 22 Ne pro dote . . .  
 bona mariti, etc.  
 — 5, 23 De fundo dotali.  
 — 5, 26 De concubinis.  
 — 6, 40 De . . . viduitate  
 et de lege Julia . . . tol-  
 lendo.  
 — 6, 61 De bonis quae  
 liberis . . . ex matrimonio,  
 etc.  
 — 8, 57 (58) De infirmandis  
 poenis caelibat. et orbitat,  
 etc.  
 — 9, 11 De mulieribus quae  
 servis . . . se junxerunt.  
 Nov. 2 De non eligendo se-  
 cundo nubentes mulieres,  
 etc.  
 — 12 De incestis et nefariis  
 nuptiis.  
 — 19 De filiis ante dotalia  
 instrument. natis.  
 — 22 De nuptiis.  
 — 39 De . . . ea quae parit  
 undecimo mense post viri  
 mortem.  
 — 61 Ut . . . antenuptial.  
 donation., etc.  
 — 68 Ut . . . lucra nup-  
 tialia ex orbitat., etc.

- 74 Quibus . . . naturales filii efficiuntur legitimi, etc.
- 78 Ut liberti . . . restituantur natalibus, etc.
- 84 De consanguineis et uterinis fratribus.
- 91 Ut exactione . . . dotis . . . viro . . . antenuptial. donation.
- 97 De aequalitate dotis et propter nuptias donation. et augmento dotis et propter nupt. donation., etc.
- 98 Neque . . . ex dote . . . neque . . . ex sponsalicia, etc.
- 100 De tempore . . . super dotem.
- 109 De privilegiis dotis, etc.
- 119 Ut sponsalicia, etc.
- 139 Remissio poenae illicit. nuptiarum.
- 143 De raptis mulieribus et quae raptoribus nubunt.
- 150 (same title as Nov. 143).
- 154 De iis . . . qui illicit. nuptias, etc.
- (c) **Post-Justinian:**
- THEOPHILUS, 1, 9 De patria potestate, 1.
- 1, 10 De nuptiis.
- 1, 15 De legit. agnat.
- 2, 7 De donation., 3.
- 2, 8 Quibus alienare, etc., (§988) as far as § 1.
- 3, 2 De . . . agnat. succession.
- 3, 5 De successione cognat., 4.
- 3, 6 De gradibus cognationis.
- ECLOGA, 1 De . . . sponsalibus.
- 2 De matrimonio licito et prohibito primo et secundo, etc.
- 3 De dote cauta et non numerata et de jure dotis.
- PROCHIRON, 1 De consensu sponsalium.
- 2 De arrhis sponsalit.
- 3 De donation. sponsalit.
- 4 De definition et ritu nuptiarum.
- 5 De rigore matrimonii.
- 6 De donation. ante nuptias.
- 7 De prohibitis nuptiis.
- 8 De jure dotis.
- 9 De vindicatione dotis, etc.
- 10 De donation. inter vir. et ux.
- EPANAGOGA, 14 De sponsalibus.
- 15 De arrhis et donation. sponsal.
- 16 De nuptiis, et ritu earum.
- 17 De nuptiis prohibitis.
- 18 De dote.

- (§988) — 19 De donation. ante nuptias.  
 — 20 De donation. inter vir. et ux.  
 BAS. 9, 9 De privilegio . . . dotis.  
 — 10, 12 Si adv. donationes.  
 — 10, 16 Si adv. dotem.  
 — 24, 4 Ne uxor pro marito, etc.  
 — 28, 1 De sponsalibus.  
 — 28, 2 De arrhis sponsal.  
 — 28, 3 De muneribus sponsal.  
 — 28, 4 De nuptiis, etc.  
 — 28, 5 De nuptiis prohibitis.  
 — 28, 6 De incestis nuptiis.  
 — 28, 8 Solutio matrimonii . . . dos petatur.  
 — 28, 9 Si dos reddita, etc.  
 — 28, 10 De impensa in re dotata facta.  
 — 28, 11 De actione rerum amotarum.  
 — 28, 12 De lucris nuptialibus.  
 — 28, 13 Ut . . . dos petatur, etc.  
 — 28, 14 De viris et mulieribus ad secundas nuptias transeuntibus.  
 — 28, 15 De . . . dotalium, et de ea quae undecimo mense post mortem mariti peperit.  
 — 29, 1 De jure dotis et donation. ante nuptias, etc.  
 — 29, 2 De augmento dotis et donation. ante nuptias, etc.  
 — 29, 3 De tempore non numeratae dotis.  
 — 29, 4 Ut donatio propter nuptias sit special. contract.  
 — 29, 5 De pactis dotis.  
 — 29, 6 De alienation. fundi dotal.  
 — 29, 7 De rebus . . . donation. ante nuptias . . . et . . . de dote, etc.  
 — 30, 1 De donation. inter vir. et ux.  
 — 32, 1 De . . . concubinis et natural. liberis.  
 — 37, 12 Ut . . . matres sine prohibitione tutelam liberorum gerant, etc.  
 — 44, 7 De dote praelegata.  
 — 45, 3 De gradibus cognatorum et affinium, etc.  
 — 45, 5 Actio, per quam vir vel uxor . . . succedunt.  
 — 45, 6 De Armeniis, ut . . . Romanorum leges sequantur.  
 HEXABIBLOS, 1, 12 De impuberibus, etc., 1.  
 — 1, 13, De mulieribus.  
 — 2, 2 De non numerata pecunia.  
 — 4, 1 De consensu sponsalium.  
 — 4, 2 De arrhis sponsal.  
 — 4, 3 De donation. sponsal.

- 4, 4 De definitione et ritu nuptiarum.
- 4, 5 De civile matrimonii rigore.
- 4, 6 De ante nuptias donatione.
- 4, 7(6) De nuptiis prohibitis.
- 4, 8 De nuptiis . . . et gradibus cognationis.
- 4, 9 (7) De iis, qui ad secundas nuptias transeunt.
- 4, 10 (8) De jure dotis.
- 4, 11 (9) De vindicatione dotis, etc.
- 4, 12 De paraphernis.
- 4, 13 (10) De hypobolo.
- 4, 14 (11) De donation, inter vir. et ux.
- 6, 4 De his qui suo se sanguine miscent.
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 GERMANY, 1297-1563.  
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 JAPAN, 765-807.  
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 2325-2437.  
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 Notes to Spanish Civil Code,  
 Manila, 1904, pp. 11-20),  
 1315-16, 1318-21, 1323,  
 1326-52, 1354-1444. (See  
 on these articles, WILLARD,  
 Id. pp. 75-84.)  
 PORTO RICO, 129-63, 1282-  
 1347.  
 QUEBEC, 115-82, 1257-1471.  
 RUSSIA, 1-131, 1001-9.  
 SPAIN, 42-103, 1315-1444.  
 SWITZERLAND, 20-21, 90-136,  
 159-251.
- III. See also *infra* § 989;  
*supra* vol. ii, §§ 459-83.

§ 989 Divorce (repudium and divortium): references.

- I. Texts of Roman law: —
- For English translations,  
 see *supra* §§ 945, 946, 948,  
 951, 952, 955.
- (a) **Ante-Justinian:**
- PAULUS, Sent. 2, 24 De  
 liberis agnoscendis, § 5.  
 ULPIAN, Reg. 14 De poena  
 legis Juliae.  
 COD. HERMOGENIAN. De re-  
 pudiis.  
 COD. THEOD. 3, 16 De repu-  
 diis.  
 NOV. THEOD. 12 De repudiis.
- (b) **Justinian:**
- DIG. 24, 2 De divortiis et  
 repudiis.  
 — 50, 16 De verb. signif.,  
 101, 1.  
 CODE, 5, 17 De repudiis,  
 etc.
- 5, 18 Solutio matri-  
 monium, etc.  
 — 5, 21 Rerum amotarum.  
 — 5, 24 Divortio facto,  
 apud quem liberi morari vel  
 educari debent.  
 NOV. 98 . . . Et ut ex re-  
 pudio, etc.  
 — 117 Ut liceat matri, etc.  
 ch. 7-15.  
 — 140 Ut possit ex con-  
 sensu dissolvi matrimonii.
- (c) **Post-Justinian:**
- ECLOGA, 2 De matrimonio  
 . . . ejus solutione.  
 PROCHIRON, De solutione ma-  
 trimonii, etc.  
 EPANAGOGA, De solutione  
 matrimonii.  
 BAS. 28, 7 De solutione ma-  
 trimonii.  
 HEXABIBLOS, 4, 15 (12) De  
 solutione matrimonii, etc.

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(b) **Modern Codes:**

References are to the Civil Code unless otherwise stated.

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- SWITZERLAND, 120-58.

III. See also supra § 988; vol. ii, §§ 484-91.

§ 990 **Legitimation: references.****I. Texts of Roman law:—**

For English translations, see  
supra §§ 945, 946, 948, 951,  
952, 955.

**(a) Ante-Justinian:**

XII TABLES, iv, 4.

COD. THEOD. 4, 6 De natu-  
ralibus filiis, etc.

NOV. THEOD. 22 De bonis  
decurionum et de natural.  
filiis eorum.

**(b) Justinian:**

INST. 1, 10 De nuptiis, 13.

— 3, 1 De hereditatibus,  
etc., 2a.

DIG. 25, 3 De agnoscendis  
et alendis liberis, etc.

CODE, 5, 27 De natural. libe-  
ris, etc.

— 10, 32 (31) De decurioni-  
bus, etc.

— 10, 44 (43) De his qui  
sponte munera susceperunt.

NOV. 19 De filiis ante dotalia  
instrumenta natis.

— 38 De natural. in cu-  
riam deputandis, etc.

— 39 De ea quae parit  
undecimo mense post viri  
mortem.

— 74 Quibus modis na-  
turales filii efficiuntur legi-  
timi, etc.

— 78 Ut . . . in libertis  
mulieribus . . . etiam nup-

tias legitimas . . . et filios  
suos, etc.

— 89 Quibus modis natu-  
rales efficiuntur sui et  
de . . . ex testamento seu  
ab intestato successione.

**(c) Post-Justinian:**

THEOPHILUS, 1, 10 De nuptiis,  
13.

— 3, 1 De hereditatibus,  
etc., 2a.

BAS. 32, 1 De . . . natural.  
liberis . . . et concubinis,  
etc.

— 32, 2 De natural. liberis  
et . . . qui legitimi facti  
sunt.

— 44, 7 De dote praele-  
gata.

**II. Modern references:—****(a) In general:**

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French private law, pp. 213,  
215.

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- MAY, *Droit rom.*, pp. 119-21.
- MOYLE, *Inst. of Justinian*, vol. i, 5th ed., pp. 136, 137.
- PETIT, *Droit romain*<sup>7</sup>, §§ 94-5.
- SCHUSTER, *German Civil Law*, § 427.
- (b) **Modern Codes:**
- References are to the Civil Code, unless otherwise stated.
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- AUSTRIA, 155-71.
- CHILE, 202-18.
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- JAPAN, 827-36.
- LOUISIANA, 198-245.
- MEXICO, 325-61.
- PHILIPPINES, 119-24, 128-41.
- PORTO RICO, 187-97.
- QUEBEC, 237-41.
- RUSSIA, 132-44.
- SPAIN, 119-41.
- SWITZERLAND, 258-263, 302-27.
- III. See also *supra* vol. i, § 150; vol. ii, §§ 483, 492-5.

### Adoption (*adrogatio* and *adoptio*): references.

§ 991

#### I. Texts of Roman law: —

#### (a) Ante-Justinian:

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

GAIUS, i, 97-123, 132, 134-41; iii, 82-7.

(§991) **ULPIAN**, Reg. 8 De adoptionibus.

(b) **Justinian**:

**INST.** 1, 11 De adoptionibus.

— 1, 12 Quibus modis jus potestatis solvitur, 6, 8–10.

— 3, 1 De hereditatibus, etc., 14.

— 3, 10 De acquisitione per adrogation.

**DIG.** 1, 7 De adoption., etc.

**CODE**, 8, 47 (48) De adoptionibus.

(c) **Post-Justinian**:

**THEOPHILUS**, 1, 11 De adoptionibus.

— 1, 12 (see supra title of **INST.** 1, 12), 6, 8–10.

— 3, 1 De hereditatibus, etc., 14.

— 3, 10 De acquisitione per adrogation.

**BAS.** 33, 1 De adoptionibus.

**HEXABIBLOS**, 2, 8 De adoptione.

**II. Modern references:—**

(a) **In general**:

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**EUCLIDES**, De l'adrogation des enfants naturels, 6 Journal de la jurispr. grecque et français, p. 412 (in Greek, mod. Greek law).

**GIRARD**, Manuel de droit romain<sup>5</sup>, pp. 171–83.

**HUNTER**, Roman law<sup>4</sup>, pp. 203–21, 778–9, 851–3.

**MACKELDEY** (Dropsie), Roman law<sup>14</sup>, §§ 592–8.

**MACKENZIE**, Roman law<sup>7</sup>, pp. 132–6.

**MAY**, Droit rom., pp. 114–19.

**MOYLE**, Inst. of Justinian, vol. i, 5th ed., pp. 137–9, 345, 385–6.

**PETIT**, Droit rom.<sup>7</sup>, §§ 92–3.

**POSTE**, Gaius<sup>4</sup>, pp. 62–6, 82, 175, 312, 473, 480.

**ROEY**, Roman private law, vol. i, pp. 58–62.

**SCHUSTER**, German civil law, § 428.

**SOHM** (Ledlie<sup>3</sup>), Roman law, pp. 479–82, 487, 507, 509, 531, 536.

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(c) **Modern Codes:**

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CALIFORNIA, 221-30.

FRANCE, 343-63.

GERMANY, 1741-72.

ITALY, 202-19.

JAPAN, 837-76.

LOUISIANA, 214 et seq.

PHILIPPINES, 765-72 (Civil Procedure).

PORTO RICO, 200-211.

RUSSIA, 145-63.

SPAIN, 173-9.

SWITZERLAND, 264-9.

III. See also supra vol. ii, §§ 496-504.

**The paternal power (*patria potestas*): references.**

§ 992

I. **Texts of Roman law:—**

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, iv, 1-3.

GAIUS, i, 48-51, 55, 65-97, 124-41, 162.

PAUL. Sent. 1, 4 De negotiis gestis.

— 2, 9 De in rem verso.

— 2, 10 De SC. Macedonianum.

— 2, 25 Quemadmodum filii sui juris efficiuntur.

— 5, 1 De liberali causa.

ULPIAN, Reg. 4 De his qui sui juris sunt.

— 5 De his qui in potestate sunt.

— 10 Qui in potestate mancipiove, etc.

COD. GREGORIAN. 3 Quod . . . qui alieno potestate, etc.

— 13, De patria potestate.

COD. HERMOGENIAN. De eorum contractibus, qui alieno jure, etc.

COD. THEOD. 2, 31 Quod jussu.

— 2, 32 De peculio.

— 3, 3 De patribus qui filios distraxerunt.

— 5, 9 De expositis.

— 5, 10 De his qui sanguinolentes emptos, etc.

— 6, 36 De castrensi omnium palatinorum peculio.

— 8, 14 De ingratis liberis.

— 8, 17 De jure liberorum.

— 8, 18 De maternis bonis, etc.

— 8, 19 De bonis quae filiusfam. ex matrimonio adq.

- (§992) — 11, 27 De alimentis quae inopes parentes de publico petere debent.  
 — 15, 8 De lenonibus.  
 NOV. MARJORIAN. 7 De curialibus.  
 NOV. THEOD. 14 De paternis sive maternis bonis.  
 NOV. VALENTINIAN. 2 De postulando.  
 — 33, De parentibus qui filios distraxerunt, etc.
- (b) **Justinian:**  
 INST. 1, 8 De his qui sui vel alieni juris, etc., to § 1.  
 INST. 1, 9 De patria potestate.  
 — 1, 12 Quibus modis jus potestatis solvitur.  
 — 1, 16 De capitis minutione, 3.  
 DIG. 1, 6 De his qui sui vel alieni juris, etc., 3-11.  
 — 1, 7 De adoption. et emancipation.; etc., 28, 31-2, 36.  
 — 14, 5 Quod cum eo qui in alieno potestate.  
 — 14, 6 De SC. Macedonianum.  
 — 15, titles 1 and 2 (on the peculium).  
 — 15, 3 De in rem verso.  
 — 15, 4 Quod jusso.  
 — 25, 3 De agnoscendis et alendis liberis, etc.  
 — 25, 4 De inspiciendo ventre, etc.
- 25, 5 Si ventris . . . mulier, etc.  
 — 25, 6 Si mulier ventris, etc.  
 — 37, 8 De conjungendis cum emancipato, etc.  
 — 37, 12 Si a parente quis manumissus sit.  
 — 37, 14 De jure patronatus.  
 — 37, 15 De liberis exhibendis, etc.  
 — 49, 17 De castrense peculio.  
 CODE, 1, 3 De episcopis et clericis, etc.  
 — 4, 13 Ne filius pro patre . . . conveniatur.  
 — 4, 26 Quod . . . de peculio seu quod jussu aut de in rem verso.  
 — 4, 27 Per quas personas nobis adq.  
 — 4, 43 De patribus qui filios distraxerunt.  
 — 5, 25 De alendis liberis, etc.  
 — 6, 60 De bonis maternis, etc.  
 — 6, 61 De bonis quae liberis in potestate constitutis vel aliter adq. . . ex matrimonio, etc.  
 — 8, 8 De liberis exhibendis, etc.  
 — 8, 46 (47) De patria potestate.  
 — 8, 48 (49) De emancipation., etc.



- 8, 51 (52) De infantibus expositis et . . . qui sanguinolentos emptos, etc. \*
- 8, 58 (59) De jure liberorum.
- 9, 15 De emendatione propinquorum.
- 9, 17 De his qui parentes vel liberos occiderunt.
- 10, 32 (31) De decurionibus, etc.
- 10, 41 (40) De honoribus et muneribus non . . . inter patrem et filium, etc.
- 10, 62 (60) De filiis familias et . . . pater pro his teneatur.
- 10, 65 (63) De legationibus.
- 11, 41 (40) De spectaculis . . . et lenonibus.
- 12, 30 (31) De castrense omn. palatinorum peculio.
- 12, 36 (37) De castrensi peculio militum, etc.
- Nov. 2 . . . Mulieres . . . et de succession. earum filiis suis.
- 81 Constitutio quae dignitatibus et episcopatu liberat filium patria potestate.
- 153 De infantibus expositis.
- (c) **Post-Justinian:**
- THEOPHILUS, 1, 8 De his qui sui vel alieni juris sunt, to § 1.
- 1, 9 De patria potestate. (§ 992)
- 1, 12 Quibus modis jus patriae potestatis solvitur.
- 1, 16 De capitis diminutione, 3.
- ECLOGA, 16 De bonis . . . castrensibus militum, etc.
- PROCHIRON, 22 De testamento hominum alieni juris.
- PROCHIRON, 26 De emancipatione.
- EPANAGOGA, 31 De testamentum hominum alieni juris.
- BAS. 10, 5 De filiis familias minoribus.
- 18, 1 De actione . . . adv. eum qui aliquem tabernae suae administrand. praeposuit.
- 18, 2 De actione . . . adv. . . . patrem, etc.
- 18, 3 De actione . . . adv. patrem, etc.
- 18, 4 De SC. Macedoniano, etc.
- 18, 5 De actione de peculio . . . adv. patrem, etc.
- 18, 6 . . . De peculio, etc.
- 18, 7 De actione quae de in rem . . . vel patris verso, etc.
- 18, 8 De his quae jussu . . . patris . . . contrahit, etc. .
- 19, 1 De . . . patribus qui filios distrahunt.

- (§992) — 24, 1 Ne . . . filius pro patre, etc.  
 — 31, 1 De his qui sui vel alieni juris sunt.  
 — 31, 2 De observantia parentibus . . . et de liberis exhibendis, etc.  
 — 31, 3 De emancipatione liberorum et ingratiss liberis, etc.  
 — 31, 4 Quibus modis jus potestatis solvatur.  
 — 31, 5 Constitutio, quae per dignitates et episcopatum filios patria potestate liberat.  
 — 31, 6 De agnoscendis et alendis liberis, etc.  
 — 33, 2 De infantibus expositis . . . et . . . qui . . . sanguinolentos emerrunt, etc.  
 — 40, 6 Si . . . quis emancipatus sit.  
 — 45, 4 De bonis maternis.  
 — 57, 2 De castrensibus pecuniis.  
 — 60, 59 De emendatione . . . propinquorum.  
 HEXABIBLOS, 1, 17 De potestatis patriae dissolutione.  
 — 5, 2 De testamento hominum alieni juris.
- ARNDTs, Lehrbuch, §§ 393-438.  
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 BRISSAUD (Howell), Hist. of French private law, p. 183, Boston, 1912.  
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 COLQUHOUN, Roman law, §§ 517-31, 683, 709, 719, 1284-5.  
 CUMMIN, Civil Law<sup>2</sup>, p. 57.  
 CUQ, Inst. jurid. des romains, vol. i, pp. 153-200; vol. ii, pp. 113-49.  
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## II. Modern references: —

### (a) In general:

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- LEAGE, Roman law, pp. 69–84.
- LEHR, De la puissance . . . paternelle d'après les principaux codes de l'Europe, 9 *Rev. de droit internat.*, pp. 52, 171.
- MACKELDEY (Dropsie), Roman law<sup>14</sup>, §§ 484–614.
- MACKENZIE, Roman law<sup>7</sup>, pp. 137–48.
- MAREZOLL, Lehrbuch, §§ 158–81.
- MAY, Droit romain, pp. 86–94, 121–3.
- MOREY, Roman law, pp. 239–43.
- MOYLE, Inst. of Justinian, vol. i, 5th ed., pp. 124–7, 142–7.
- PETIT, Droit romain<sup>7</sup>, §§ 82–4, 96–7.
- POSTE, Gaius<sup>4</sup>, pp. 39 et seq.
- ROBY, Roman private law, vol. i, pp. 57, 62–4.
- SAVIGNY, System, vol. viii, §§ 380–96.
- SCHUSTER, German civil law, §§ 441–8.
- SMITH, Dict. of antiq., "patria potestas."
- SOHM (Ledlie<sup>3</sup>), Roman law, (§ 992) pp. 479–86.
- THIBAUT, Lehrbuch, §§ 154–70.
- WALTON, Roman law<sup>2</sup>, pp. 70, 100.
- ZIMMERN, Geschichte d. röm. Rechts, §§ 139–93, 219–31.
- (b) **Modern Codes:**
- References are to the Civil Code, unless otherwise stated.
- ARGENTINA, 298–344.
- AUSTRIA, 137–86.
- CHILE, 240–69.
- FRANCE, 371–87, 476–87.
- GERMANY, 1627–98.
- ITALY, 220–39, 310–22.
- JAPAN, 877–99.
- LOUISIANA, 178–97, 215–45, 365–88.
- MEXICO, 290–324, 362–402.
- PHILIPPINES (see WILLARD, Notes to Spanish Civil Code, pp. 20–23, 28–30, Manila, 1904).
- PORTO RICO, 180–99, 222–36.
- QUEBEC, 218–36, 242–5.
- RUSSIA, 164–95.
- SPAIN, 108–18, 154–72.
- SWITZERLAND, 252–7, 273–89.
- III. See also *infra* § 1000; *supra* vol. ii, §§ 434, 446, 505–14.

§ 993 Guardianship (*tutela* and *curatio*): references.**I. Texts of Roman law: —**

For English translations, see  
supra §§ 945, 946, 948, 951,  
952, 955.

**(a) Ante-Justinian:**

XII TABLES, v. 1-3, 6-7; viii,  
20.

GAIUS, i, 132, 142-58, 164-  
200; ii, 80-85.

PAUL. Sent. 1, 1a, 22-30.

— 1, 4 De negotiis gestis.

— 1, 9 De minoribus xxv  
annorum; also 1, 9a.

— 2, 27 De excusationibus  
tutorum.

— 2, 28 De potioribus nomi-  
nandis.

— 2, 29 Qui potiores nomi-  
nare, etc.

— 2, 30 Ad oration. divi  
Severi.

— 2, 30a; also 3, 10.

— 5, 1 De liberali causa,  
8; also 5, 5b.

ULPIAN, Reg. 11 De tutelis.

— 12 De curatoribus.

— 29 De bonis libertorum.

COD. GREGORIAN. 2 Si adv.  
donation., etc.

— 6, 18 Abitrium tutelae.

COD. THEOD. 2, 4 De de-  
nuntiation., etc.

— De integri restitutione.

— 3, 17 De tutor. et cura-  
tor. creandis.

— 3, 18 Qui petant.

COD. THEOD. 3, 30 De ad-  
ministratone et periculo  
tutor. et curator.

— 3, 31 De excusatione  
tutorum.

— 3, 32 De praediis mino-  
rum sine decreto non alien-  
andis.

— 4, 3 De Carboniano edic-  
to.

— 9, 8 Se quis eam cujus  
tutor . . . corruerit.

— 12, 17 De . . . numero  
liberorum vel paupertate  
excusationem, etc.

NOV. THEOD. 11 De tutori-  
bus.

VATICAN FRAG. De excusa-  
tione.

**(b) Justinian:**

INST. 1, 12 Quibus modis, etc.,  
6.

— 1, 13 De tutelis.

— 1, 14 Quibus . . . tu-  
tores testamento, etc.

— 1, 15 De legitima adgnat.  
tutela.

— 1, 16 De cap. minu-  
tione, 7.

— 1, 17 De legitima pat-  
tronum tutela.

— 1, 18 De legitima paren-  
tum tutela.

— 1, 19 De fiduciaria tu-  
tela.

- 1, 20 De Atiliciano tutore, vel eo . . . ex lege Julia et Tatia.
- 1, 21 De auctoritate tutorum.
- 1, 22 Quibus modis tutela finitur.
- 1, 23 De curatoribus.
- 1, 24 De satisfactione tutor. vel curator.
- 1, 25 De excusationibus tutor. vel curator.
- 1, 26 De suspectis tutor. vel curator.
- 2, 8 Quibus modis alienare, etc. 2.
- DIG. 4, 1 De integrum restitution.
- 4, 4 De minoribus xxv annis.
- 25, 4 De inspiciendo ventre custodiendoque partu.
- 25, 6 Si mulier ventris.
- 26, 1 De tutelis.
- 26, 2 De testamentaria tutela.
- 26, 3 De confirm. tutor. vel curator.
- 26, 4 De legitimis tutor.
- 26, 5 De tutor. et curator. datis . . . et in quib. causis specialiter dari, etc.
- 26, 6 Qui petant tutores vel curatores, etc.
- 26, 7 De administratione et periculo tutor. et curator., etc.
- 26, 8 De auctoritate et (§ 993) consensu tutor. et curator.
- 26, 9 Quando ex facto tutor. vel curator. agere, etc.
- 26, 10 De suspectis tutor. et curator.
- 27, 1 De excusationibus.
- 27, 2 Ubi pupillus educari vel morari debeat, etc.
- 27, 3 De tutelae et rationibus distrahendis et utili curationis causa actione.
- 27, 4 De contraria tutelae et utili actione.
- 27, 5 De eo qui pro tutor. prove curator., etc.
- 27, 6 Quod falso tutor, etc.
- 27, 7 De fidejussor. et nominator. et heredibus tutor. et curator.
- 27, 8 De magistrat. convenientibus.
- 27, 9 De rebus eorum, qui sub tutela vel cura sunt, sine decreto non alienandis, etc.
- 27, 10 De curator. furioso et aliis extra minores dandis.
- 37, 8 De ventre . . . et curatore ejus.
- 42, 7 De curatore bonis dando.
- 46, 6 Rem pupilli vel adulescentis salvam fore.

- (§993) DIG. 47, 23 De popularibus actionibus.  
 — 49, 10 Si tutor vel curator . . . appellaverit.  
 — 50, 5 De vacatione et excusatione munerum.  
 — 50, 6 De jure immunitatis.  
 CODE, 2, 21 (22) De . . . integrum restitutione minor. xxv annis.  
 — 2, 22 (23) De filiofam. minore.  
 — 2, 23 (24) De fidejussor. minorum.  
 — 2, 24 (25) Si tutor vel curator intervenerit.  
 — 2, 26 (27) Si adv. rem judicatam.  
 — 2, 27 (28) Si adv. venditionem.  
 — 2, 28 (29) Si adv. venditionem pignoris.  
 — 2, 29 (30) Si adv. donationem.  
 — 2, 30 (31) Si adv. libertatem.  
 — 2, 31 (32) Si adv. transactionem, etc.  
 — 2, 32 (33) Si adv. solutionem.  
 — 2, 33 (34) Si adv. dotem.  
 — 2, 34 (35) Si adv. delictum.  
 — 2, 35 (36) Si adv. usucapionem.  
 — 2, 36 (37) Si adv. fiscum.  
 — 2, 37 (38) Si adv. creditorem.  
 — 2, 38 (39) Si ut se hereditate absteineat.  
 — 2, 39 (40) Si ut omissam hereditatem, etc.  
 — 2, 40 (41) In . . . integrum restitutio, etc.  
 — 2, 41 (42) Qui et adv. . . . integrum restitutio, etc.  
 — 2, 42 (43) Si minor se majorem dixerit, etc.  
 — 2, 43 (44) Si saepius . . . integrum restitutio, etc.  
 — 2, 45 (46) Si major factus raturum habuerit.  
 — 2, 46 (47) Ubi et apud quem cognitio restitutionis, etc.  
 — 2, 47 (48) De reputatione. . . . integrum restitutionis.  
 — 2, 48 (49) Etiam per procurator. . . . integrum restitutionis, etc.  
 — 2, 49 (50) In integrum restitutione, etc.  
 — 2, 52 (53) De temporibus in integrum restitutionis, etc.  
 — 3, 6 Qui legit. personam in judiciis, etc.  
 — 3, 21 Ubi agi oportet ratiociniis, etc.  
 — 5, 26 De interdicto matrimonio inter pupil. et tutor. seu curator., etc.  
 — 5, 28 De tutela testamentaria.  
 — 5, 29 De confirm. tutore.

- 5, 30 De legitima tutela.
- 5, 31 Qui petant tutor.  
vel curator.
- 5, 32 Ubi petant tutor.  
vel curator.
- 5, 33 De tutor. et cura-  
tor. . . . illustrium per-  
sonarum.
- 5, 34 Qui dare tutor. vel  
curator.
- 5, 35 Quando mulier  
tutelae officio fungi potest.
- 5, 36 In quibus causis  
tutorem habenti tutor vel  
curator dari potest.
- 5, 37 De administra-  
tione tutor. vel curator.,  
etc.
- 5, 38 De periculo tutor.  
et curator.
- 5, 39 Quando ex facto  
tutor. vel curator. agere,  
etc.
- 5, 40 Si ex pluribus  
tutor. vel curator. unus  
agere, etc.
- 5, 41 Ne tutor vel cura-  
tor vectigal conducatur.
- 5, 42 De tutor. vel cura-  
tor. qui satis non dedit.
- 5, 43 De suspectis.
- 5, 44 De in litem dando  
tutor. vel curator.
- 5, 45 De eo qui pro  
tutore . . . gessit.
- 5, 46 Si mater indemni-  
tatem, etc.
- 5, 47 Si contra matris  
voluntatem tutor datus sit.
- 5, 48 Ut . . . post pu-  
bertatem adsit tutor.
- 5, 49 Ubi pupil. edu-  
cerentur.
- 5, 50 De alimentis pu-  
pillo, etc.
- 5, 51 Arbitrium tutelae.
- 5, 52 De dividenda tu-  
tela, etc.
- 5, 53 De in litem ju-  
rando.
- 5, 54 De heredibus tu-  
torum.
- 5, 55 Si tutor non ges-  
serit.
- 5, 56 De usuris pupil-  
laribus.
- 5, 58 De contrario ju-  
dicio.
- 5, 59 De auctoritate,  
etc.
- 5, 60 Quando curator.  
vel tutor. esse desinant.
- 5, 61 De actore a tutore  
seu curatore dando.
- 5, 62 De excusationibus,  
etc.
- 5, 63 Si falsis adlegation.  
excusatus sit.
- 5, 64 Si tutor rei pub-  
licae causa aberit.
- 5, 65 De excusatione  
veteranorum.
- 5, 66 Qui numero li-  
berorum se excusant.
- 5, 67 (68) Qui aetate.
- 5, 68 (67) Qui morbo.
- 5, 69 Qui numero tute-  
larum.

- (§993) CODE, 5, 70 De curator. furiosi vel prodigi.
- 5, 71 De praediis vel aliis rebus minorum sine decreto non alienandis vel obligandis.
- 5, 72 Quando decreto opus non est.
- 5, 73 Si quis ignorans rem minoris esse sine decreto comparavit.
- 5, 74 Si major factus sine decreto . . . alienation. ratam habuerit.
- 9, 10 Si quis eam cujus tutor . . . corruperit.
- 10, 43 (42) . . . Civilium munera, etc.
- 10, 44 (43) De his qui . . . munera, etc.
- 10, 48 (47) De excusationibus munerum.
- 10, 49 (48) De . . . muneribus . . . nemini liceat se excusare.
- 10, 50 (49) Qui aetate se excusant.
- 10, 51 (50) Qui morbo.
- 10, 52 (51) De his qui munero liberorum vel paupertate excusationem, etc.
- 10, 53 (52) De professoribus et medicis.
- 10, 54 (53) De athleticis.
- 10, 55 (54) De his qui non impletis stipendiis sacramento soluti sunt.
- 10, 56 (55) Quibus muneribus excusantur . . . post . . . militiam vel ad-vocation., etc.
- 10, 57 (56) De conductoribus vectigalium fisci.
- 10, 58 (56) De libertinis.
- 10, 59 (57) De infamibus.
- 10, 66 (64) De excusationibus artificum.
- 10, titles 67 (65)–73 (71), are minor titles on “munera”.
- Nov. 72 Ut . . . res minorum . . . et ut curatores, etc.
- 94 Ut sine prohibitione matres debetrices et cred. tutelam gerant minorum, etc.
- 131 De ecclesiast. titulis.
- 155 Ut matres tutelae rationibus obnoxiae sint.
- (c) **Post-Justinian:**
- THEOPHILUS, i, 12, 6; i, 13–15; i, 16, 7; i, 17–26; ii, 82 (same titles as INST. supra).
- ECLOGA, 7 De pupillis, etc.
- PROCHIRON, 31 De restitutione.
- 36 De tutoribus.
- EPANAGOGA, 38 De tutoribus.
- BAS. 9. 6 Quibus ex causis, etc.
- 9, 7 De rebus auctoritate iudicum poss., etc.
- 10, 4 De restitutione minorum.
- 10, 5 De filiisfam. minor.



- 10, 7 Si tutor vel curator intervenierit.
- 10, 14 Si adv. transactionem . . . minor, etc.
- 10, 21 Si quis se hereditate absteineat.
- 10, 25 Si minor se major. dixerit, etc.
- 10, 34 De temporibus . . . in integrum restit. . . . minorum, etc.
- 17, 1 De negotia aliena gerentibus.
- 17, 2 De . . . sumtus, etc.
- 37, 1 De tutor. et curator.
- 37, 2 De tutor. testamentariis.
- 37, 3 De confirm. tutor. et curator.
- 37, 4 De legitimis tutor.
- 37, 5 De tutor. et curator. datis, etc.
- 37, 6 Qui petant curator. vel tutor., etc.
- 37, 7 De administratione tutor. et curator. et de periculo, etc.
- 37, 8 De auctoritate et consensu tutor. et curator.
- 37, 9 Ex . . . facto tutor. vel curator. . . . agere, etc.
- 37, 10 De suspicione tutor. et curator.
- 37, 11 De curator. et tutor. et cura minorum.
- 37, 12 Ut matres sine (§ 993) prohibitione liberorum tutelam gerant, etc.
- 38, 1 De excusatione . . . tutor. et curator.
- 38, 2 Ubi pupil. educari et morari debeat, etc.
- 38, 3 De actione . . . in tutor. et curator. datur, et de rationibus, etc.
- 38, 4 De contraria tutelae et utili actione.
- 38, 5 De actione . . . adv. tutor. et curator., etc.
- 38, 6 Si falsi tutoris auctoritate negotium gestum, etc.
- 38, 7 De . . . heredibus tutor. et curator. et fidejussor. eorum.
- 38, 8 Magistratus teneri ob inopiam tutor. a se datorum.
- 38, 9 De rebus . . . qui sub tutela vel cura . . . sine decreto non alienandis vel obligandis.
- 38, 10 De curator. qui dantur furiosis vel prodigis, vel aliis extra minores.
- 38, 11 Res pupilli salva esto.
- 38, 12 De curator. bonis dandis.
- 38, 13 Ne tutor vel curator vectigalia conducat.
- 38, 14 De dividenda tutela, etc.

- (§993) BAS. 38, 15 De jurejurando in litem.  
 — 38, 16 Si tutor non gesserit.  
 — 38, 17 De usuris pupil.  
 — 38, 18 De contrario iudicio.  
 — 38, 19 Quando tutor. vel curator. esse desinant.  
 — 40, 2 De bonorum poss. furiosi, muti, surdi, coeci.  
 — 54, 5 De vacatione et excusatione munerum.  
 — 54, 6 De jure immunitat.  
 — 60, 57 Si quis eam cujus tutor . . . corruerit.  
 HEXABIBLOS, 1, 12 De impuberibus et minoribus, aequè in integrum restit.  
 — 2, 5 De muneribus, etc.  
 — 5, 12 (11) De tutor., curator., etc.
- II. Modern references: —**
- (a) **In general:**
- AMOS, Roman law, pp. 290–304.  
 BRISSAUD (Howell), Hist. of French private law, pp. 232–60, Boston, 1912.  
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 DEBRAY, Contribution à l'étude de la loi Plaetoria relative à la protection du mineur de 25 ans (Mélanges P. F. Girard, vol. i, pp. 265–314, Paris, 1912).  
 GIRARD, Manuel de droit romain<sup>5</sup>, pp. 200–235.  
 HUNTER, Roman law<sup>4</sup>, pp. 126–30, 696–735.  
 MACKELDEY (Dropsie), Roman law<sup>14</sup>, §§ 614–48.  
 MACKENZIE, Roman law<sup>7</sup>, pp. 149–59.  
 MOREY, Roman law, pp. 252–60.  
 MOYLE, Inst. of Justinian, vol. i, 5th ed. pp. 147–80.  
 PETIT, Droit romain<sup>5</sup>, §§ 102–32.  
 POSTE, Gaius<sup>4</sup>, pp. 90–116.  
 ROBY, Roman private law, vol. i, pp. 92, 102, 121.  
 SAVIGNY, System, vol. iii, §§ 106–11; vol. vii, §§ 322–4; vol. viii, §§ 380, 396.  
 SCHUSTER, German civil law, §§ 449–67.  
 SOHM (Ledlie<sup>3</sup>), Roman law, pp. 488–500.
- (b) **Modern Codes:**
- References are to the Civil Code, unless otherwise stated.
- ARGENTINA, 411–528.  
 AUSTRIA, 187–284.  
 CHILE, 338–544.  
 FRANCE, 389–515.  
 GERMANY, 1773–1921.  
 ITALY, 240–349.  
 JAPAN, 900–953.

LOUISIANA, 246-426.

RUSSIA, 212-382.

MEXICO, 403-597.

SPAIN, 199-320.

PHILIPPINES (civil procedure),  
551-81.

SWITZERLAND, 360-456.

PORTO RICO, 237-302.

III. See also supra § 986; vol.

QUEBEC, 114, 246-351.

ii, §§ 445, 449, 515-35.

**Artificial persons, particularly private corporations: refer-§ 994**  
**ences.** No mention at all of corporations is made in the Institutes of Justinian<sup>1</sup>: this subject was almost entirely reserved for the fifth or last year in Roman law schools.<sup>2</sup> But the Digest and Code of Justinian are very important sources of the Roman law of corporations.<sup>3</sup> The Theodosian Code<sup>4</sup> is our great repository of information in regard to the legislation of the early Christian Emperors concerning corporations, both public and private. Another and voluminous source of information has arisen from the modern discoveries, in the remains of Roman cities, of tablets containing inscriptions of all sorts. These have been collected in Mommsen's famous *Corpus inscriptionum Latinarum*.<sup>5</sup>

## I. Texts of Roman law:—

— 10, 19 De metallis et metallariis.

For English translations, see  
supra §§ 945, 946, 948, 951,  
952, 955.— 10, 20 De murilegulis,  
etc.

## (a) Ante-Justinian:

— 10, 21 De vestibus,  
etc.

## XII TABLES, viii, 27.

— 10, 22 De fabricensibus.

ULPIAN, Reg. xxii, 5; xxiv, 29.

COD. THEOD. 6, 13 De com-  
itibus et tribunis scholarum.

— 10, 23 De classicis.

— 8, 9 De lucris officiorum.

— 14, 2 De privilegiis corporatorum urbis Romae.

— 8, 10 De concussionibus  
advocatorum, etc.— 14, 3 De pistoriis et  
catabolensibus.<sup>1</sup>See supra vol. i, § 138.<sup>2</sup>See supra vol. i, § 161.<sup>3</sup>Especially *Dig.* 3, 4, and *Dig.* 47, 22. See supra vol. 1, §§ 136-47.<sup>4</sup>See supra vol. i, § 128.<sup>5</sup>This was published in 1861. As to Mommsen, see supra vol. i, § 353. The *Corpus inscript. Graecarum* (1856) is also a source of light on Roman corporation law.

(§ 994) — 14, 4 De suariis, pecuariis, et susceptoribus vini ceterisque corporatis.

— 14, 5 De mancipibus thermarum urbis et subvectione lignorum.

— 14, 6 De calcis coctoribus urbis Romae et Constantinop.

— 14, 7 De collegiatis.

— 14, 8 De centonariis et dendroforis.

— 14, 18 De mendicantibus non invalidis.

— 14, 22 De saccariis Portus Romae.

— 14, 27 De Alexandrinae plebis primatibus.

Nov. SEVERUS, 2.

Nov. THEODOS. 6 De bonis fabricensium.

Nov. VALENTINIAN. 29 De naviculariis amnicis.

— 36 De suariis, boariis et pecuariis.

(b) Justinian:

DIG. 3, 4 Quod cujuscumque universitatis, etc.

— 34, 5 De rebus dubiis, 20.

— 47, 22 De collegiis et corporibus.

— 49, 14 De jure fisci.

— 50, 16 De verb. signif., 16 and 85.

CODE, 1, 3 De episcopis, etc. 48.

— 3, 23 Ubi quis de curiali

vel cohortali . . . conveniatur.

— 6, 62 De hereditatibus decurionum, naviculariorum cohort. militum et fabricensium.

— 10, 10 De bonis vacantibus et de incorporatione.

— 11, 2 (1) De naviculariis, etc.

— 11, 3 (2) De praediis naviculariorum.

— 11, 4 (3) De navibus non excusandis.

— 11, 5 (4) Ne quid oneri publico imponatur.

— 11, 7 (6) De metallariis et metallis, etc.

— 11, 8 (7) De murilegulis, etc.

— 11, 10 (9) De fabricensibus.

— 11, 16 (15) De pistoribus.

— 11, 17 (16) De suariis.

— 11, 18 (17) De collegiatis, etc.

— 11, 26 (25) De mendicantibus validis.

— 11, 27 (26) De natuis Tiberinis.

— 12, 11 De comitibus et tribunis scholarum.

— 12, 17 De domesticis et protectoribus.

— 12, 29 (30) De privilegiis scholarum.

Nov. 64 De hortulanis Constantinop.

(c) **Post-Justinian:**

BAS. 54, 16 De purpura imperatoris, etc.

— 54, 20 De suariis et susceptoribus vini, et reliquis corporibus.

— 54, 21 De collegiatis, etc.

— 54, 28 De jure reipublicae.

— 60, 32 De collegiis sodalitiis et corporibus, etc.

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POSTE, Gaius<sup>4</sup>, pp. 118–21.

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- CHILE, 545-64; Code of commerce, 348, 424-69.
- FRANCE, Code of commerce, book i, title 3, "sociétés anonymes," etc.
- GERMANY, 21-89; Code of commerce, 182-311.
- ITALY, Code of commerce, book i, title 9, especially art. 76 et seq., 121 et seq.
- JAPAN, 33-84; Code of commerce, 42-8, 119-234.
- LOUISIANA, 427-47.
- MEXICO, Code of commerce, 89-99, 163-225, 265-7.
- PHILIPPINES, 35-9.
- PORTO RICO, 27-92.
- QUEBEC, 352-73.
- RUSSIA, 2139-98.
- SPAIN, 35-9; Code of commerce, 116-24, 151-238.
- SWITZERLAND, 52-89; Code of obligations, 612-715.
- III. See also supra vol. ii, §§ 536-56, 908-12.

§ 995 **Things, ownership, and possession: references.**

- I. **Texts of Roman law: —**
- For English translations, see supra §§ 945, 946, 948, 951, 952, 955.
- (a) **Ante-Justinian:**
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- PAUL. Sent. 1, 11 De satisfando.
- 1, 13b Si hereditas, etc.
- 1, 21 De supulchria, etc.
- 5, 2 De usucapione.
- 5, 19 De sacrilegis.
- 5, 19a (on res sacrae).
- 5, 26 Ad legem Juliam de vi publica, etc., §§ 3-4.

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 COD. GREGORIAN. 3 De rei vindicatione.  
 COD. HERMOGENIAN. Ad exhibendum.  
 COD. THEOD. 2, 6 De temporum cursu, etc.  
 — 2, 23 De rei vindicatione.  
 — 4, 21 Quorum bonorum.  
 — 4, 22 Unde vi.  
 — 4, 23 Utrubi.  
 — 4, 24 De aedificiis privatis et publicis.  
 — 10, 3 De locatione fundorum . . . et rei publicae.  
 — 11, 38 De possessione . . . transferenda.  
 — 14, 14 De campo Martio urbis Romae.  
 — 15, 3 De itinere muniendo.  
 COLL. MOSAIC. ET ROM. De termino amoto.  
 CONST. SIRMUNDIAN. 16.  
 NOV. MARJORIAN. 4 De aedificiis publicis.  
 NOV. THEOD. 19 De rescind. vendition. fundorum rei domenicæ.  
 — 23 De locis rei publicæ, etc.  
 NOV. VALENTINIAN. 8 De invaloribus.  
 (b) **Justinian:**  
 INST. 2, 1 De rerum divisione, 1-11, 47, 48.  
 — 4, 15 De interdictis, 5.  
 DIG. 1, 8 De divisione rerum. (§ 995)  
 — 6, 1 De rei vindicatione.  
 — 6, 2 De Publiciana in rem actione.  
 — 6, 3 Si ager vectigalis, etc.  
 — 10, 4 Ad exhibendum.  
 — 11, 7 De religiosis, etc.  
 — 11, 8 De mortuo . . . et sepulchro, etc.  
 — 14, 2 De lege Rhodia de jactu.  
 — 39, 1 De operis novi nuntiatione, 1 and 5.  
 — 41, 1 De acquirendo rerum dominio.  
 — 41, 2 De acquirenda vel amitt. possessione.  
 — 41, 4 Pro emptore.  
 — 41, 5 Pro herede vel pro possessore.  
 — 41, 7 Pro derelicto.  
 — 41, 8 Pro legato.  
 — 41, 10 Pro suo.  
 — 42, 4 Quibus ex causis in possession., etc.  
 — 42, 5 De rebus auctoritate iudicis possidendis, etc.  
 — 43, 2 Quorum bonorum.  
 — 43, 3 Quod legatum.  
 — 43, 4 Ne vis fiat ei, qui in possession.  
 — 43, 6 Ne quid in loco sacro fiat.  
 — 43, 7 De locis et itineribus.  
 — 43, 8 Ne quid in loco publico, etc.  
 — 43, 9 De loco publico fruendo.

- (§ 995) — 43, 10 De via publica, etc.
- 43, 11 De via publica, etc.
- 43, 12 De fluminibus, etc.
- 43, 13 Ne quid in flumine publico, etc.
- 43, 14 Ut in flumine publico navigare, etc.
- 43, 15 De ripa munienda.
- 43, 16 De vi et vi armata.
- 43, 17 Uti possidetis.
- 43, 21 De rivis.
- 43, 27 De arboribus caedendis.
- 43, 31 Utrubi.
- 44, 3 De . . . accessionibus possessionum.
- 47, 21 De termino moto.
- 48, 7 Ad legem Juliam de vi privata.
- 50, 16 De verborum significatione.
- CODE, 2 14 (15). De his, qui potentiorum nomine titulos praediis adfigunt, etc.
- 2, 16 (17) Ut neminem liceat sine iudicis auctoritate signa imprimere rebus, quas alius tenet.
- 2, 15 (16) Ut nemo privatus titulos praediis suis vel alienis imponat, etc.
- 3, 16 Ubi de possessione agi oportet.
- 3, 19 Ubi in rem actio exerceri debet.
- 3, 27 Quando liceat sine iudice . . . vindicare, etc.
- 3, 32 De rei vindicatione.
- 6, 38 De verborum et rerum significatione.
- 7, 25 De nudo ex jure Quiritium tollendo.
- 7, 31 De . . . sublata differentia rerum Mancipi et nec Mancipi.
- 7, 32 De acquirenda et retinenda possessione.
- 7, 69 Si de momentaria possessione, etc.
- 7, 72 De bonis auctoritate iudicis possidendis, etc.
- 8, 4 Unde vi.
- 8, 5 Si per vis vel alio modo absentis perturbata possessio.
- 8, 6 Uti possidetis.
- 8, 11 (12) De operibus publicis.
- 8, 44 (45) De evictionibus.
- 8, 45 (46) Creditorem evictionem non debere.
- 9, 12 Ad legem Juliam de vi publica seu privata.
- 9, 19 De sepulchro violato.
- 9, 29 De crimine sacrilegii.
- 9, 33 Vi bonorum raptorum.
- 10, 10 De bonis vacantibus, etc.



- 10, 34 (33) De praediis. curialium, etc.
- 11 6 (5) De naufragiis.
- 11, 56 (55) Non licere . . . ad extraneum transferre.
- 11, 61 (60) De pascuis publicis vel privatis.
- 11, 75 (74) De privilegiis domus Augustae, etc.
- 11, 77 (76). De palatiis. Nov. 36 Ut hi qui in Africa . . . debeant vindicare.
- 65 De alienatione rerum ecclesiae Mysiae relictarum pro captivorum redemptione, etc.
- 67 Ut nullus fabricet oratorii domum praeter voluntatem episcopi, etc.
- 111 Haec const. innovat . . . praescriptionem centum annorum locis venerabilibus, etc.
- 120 De alienatione . . . rerum sacrarum.
- 131 De ecclesiast. titulis.
- 167 Generalis maxima forma . . . mitti in possessionem, etc.

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(c) **Post-Justinian:**

- THEOPHILUS, 2, 1 De rerum divisione, §§ 1-11, 47-8.
- 4, 15 De interdictis, 5.
- PROCHIRON, 38 De novis operis.

EPANAGOGA, 39 De novis (§995) operibus.

BAS. 2, 2 De verborum significatione.

— 7, 10 De his, qui . . . titulos praediis affigunt, etc.

— 7, 11 Ut nemo privatus titulos praediis . . . vel alienis imponat, etc.

— 7, 19 De his, qui legitimam personam in iudiciis habeant, etc.

— 9, 7 De rebus auctoritate iudicum possidendis, etc.

— 15, 1 De rebus vindicandis, etc.

— 15, 2 De Publiciana in rem actione.

— 15, 4 De rebus exhibendis, etc.

— 27, 1 De rebus, de quarum dominio disceptatur.

— 46, 3 De rerum divisione, etc.

— 50, 1 De dominio ex variis modis, etc.

— 50, 2 De acquisita vel amissa possessione.

— 50, 7 De derelictis.

— 51, 5 Ne vis fiat ei, qui in possessionem missus, etc.

— 53, 3 De naufragio, etc.

— 53, 8 Capita excerpti juris Rhodiorum navalis.

— 54, 12 De operibus publicis.

— 54, 37 De theatris.

- (§995) — 55, 13 De diversis prae-  
diis . . . templorum et civi-  
tatum, etc.
- 56, 20 De adjectionibus.
- 56, 21 Quomodo quis in  
possessionem mittendus sit.
- 58, 8 De locis et itineri-  
bus publicis, etc.
- 58, 10 De novi operis, etc.
- 58, 11 De aedificiis priva-  
tis.
- 58, 12 De operibus pub-  
licis, etc.
- 58, 14 De interdictis.
- 58, 15 Ne quis in loco  
sacro fiat.
- 58, 16 Ne quid in flu-  
mine publico ripave, etc.
- 58, 17 Interdictum ad  
retinend. possession.
- 58, 23 Quod vi aut clam.
- 59, 1 De monumentis,  
etc.
- 59, 2 De mortuo . . .  
et sepulchro, etc.
- 59, 3 De funere, etc.
- 60, 16 De arboribus . . .  
caesis.
- 60, 17 De bonis vi rap-  
tis, etc.
- 60, 18 Ex lege Julia de  
vi publica et privata.
- 60, 23 De violatione  
sepulcrorum, etc.
- 60, 31 De termino moto.
- 60, 69 De reliquis puni-  
torum.
- HEXABIBLOS, 1, 16 De mili-  
tibus.
- 2, 1 De possessione et  
dominio.
- 2, 4 De novis operibus.
- 6, 5 De furibus . . .  
sepulcrorum, etc.
- Leges agrariae (praefa-  
tio).
- Leges agrariae, 1 De  
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- Leg. agr., 3 De armen-  
tariis.
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- Leg. agr., 10 De novis  
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67, 294-8.
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- (b) **Modern Codes:**—
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- SPAIN, 333–50, 384–466.
- SWITZERLAND, 641–729.
- III. See also *infra* §§ 997–9; *supra* vol. ii, §§ 557–81.

**Personal, praedial, and praetorian servitudes: references.** § 996**A. Usufructus, usus, habitatio, operae (personal servitudes):****I. Texts of Roman law: —**

For English translations, see  
supra §§ 945, 946, 948, 951,  
952, 955.

**(a) Ante-Justinian:**

GAIUS, ii, 12–42, 86–7.

PAUL. Sent. 1, 11 De satisfaciendo (usufruct).

ULPIAN, Reg. 19 De dominiis, etc.

VATICAN FRAG. 41–93 De usu fructu.

**(b) Justinian:**

INST. 2, 1 De rerum divisione, 35–8.

— 2, 2 De rebus incorporal.

— 2, 4 De usufructu.

— 2, 5 De usu et habitatione.

— 2, 9 Per quas personas nobis adquiritur, as far as § 3.

DIG. 7, 1 De usu fructu, etc.

— 7, 2 De usu fructu ad crescendo.

— 7, 3 Quando . . . usus fructus legati cedat.

— 7, 4 Quibus modis usus fructus vel usus amittitur.

— 7, 5 De usu fructu earum . . . quae usu consumuntur, etc.

— 7, 6 Si usus fructus petetur, etc.

— 7, 7 De operis servorum.

— 7, 8 De usu et habitatione.

— 7, 9 Usufructuarius quemadmodum caveat.

— 8, 1 De servitutibus.

— 8, 6 Quemadmodum servitutes amittuntur.

— 43, 25 De remissionibus.

CODE, 3, 33 De usufructu et habitatione et ministerio servorum.

— 5, 10 Si secundo nupserit mulier, etc. (usufruct).

**(c) Post-Justinian:**

THEOPHILUS, 2, 1 De rerum divisione, 35–8.

— 2, 2 De rebus corporal., etc.

— 2, 4 De usufructu.

— 2, 5 De usu et habitatione.

— 2, 9 Per quas personas . . . adquiritur, as far as § 3.

BAS. 16, 1 De usufructu.

— 16, 2 De usufructu accrescente.

— 16, 3 Quibus diebus usufructus legatus cedat.

— 16, 4 Quibus modis usufructus amittatur.

— 16, 5 De usufructu rerum, quae usu minuuntur.

- (§ 996) — 16, 6 Si usufructus petatur, etc.  
 — 16, 7 De operis servorum.  
 — 16, 8 De usu et habitatione.  
 — 16, 9 Usufructuarius quemadmodum caveat.  
 — 44, 5 De usu . . . et habitatione et operis, etc.  
 — 44, 6 De servitute legata.  
 — 58, 1 De servitutibus.  
 HEXABIBLOS, 2, 10 De . . . usufructu.
- B. Servitudes of land (praedial servitudes):**
- I. Texts of Roman law: —**  
 For English translations, see supra §§ 945, 946, 948, 951, 952, 955.
- (a) **Ante-Justinian:**  
 XII TABLES, vii, 1-2, 6-10.  
 GAIUS, iv, 3.  
 PAUL. Sent. 1, 17 De servitutibus.  
 ULPIAN, Reg. 19 De dominiis, etc.  
 CODE THEOD. 15, 2 De aquaeductu.
- (b) **Justinian:**  
 INST. 2, 2 De rebus incorporal.  
 — 2, 3 De servitutibus.  
 — 4, 6 De actionibus, 2.  
 DIG. 8, 1 De servitutibus.  
 — 8, 2 De serv. praed. urban.
- DIG. 8, 3 De serv. praed. rustic.  
 — 8, 4 Communia praed. tam urban. quam rustic.  
 — 8, 5 Si servitus vindicetur, etc.  
 — 8, 6 Quemadmodum serv. amittuntur.  
 — 39, 1 De operis novi nuntiatione.  
 — 39, 2 De . . . suggrundis et projectionibus.  
 — 39, 3 De aqua et aquae pluviae arcendae.  
 — 43, 19 De itinere, etc.  
 — 43, 20 De aqua cottidiana et aestiva.  
 — 43, 21 De rivis.  
 — 43, 22 De fonte.  
 — 43, 25 De remissionibus.  
 — 43, 27 De arboribus caedendis.  
 — 47, 3 De tigno juncto.  
 CODE, 3, 34 De servitutibus, etc.  
 — 8, 10 De aedificiis privatis.  
 — 11, 43 (42) De aquaeductu.  
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- (c) **Post-Justinian:**  
 THEOPHILUS, 2 2 De rebus corporal., etc.  
 — 2, 3 De servitutibus.  
 — 4, 6 De actionibus, 2.

PROCHIRON, 38 De novis operibus.

EPANAGOGA, 39 De novis operibus.

BAS. 44, 6 De servitute legata.

— 58, 1 De servitibus.

— 58, 2 De serv. praed. urban.

— 58, 3 De serv. praed. rustic.

— 58, 4 De commun. praed. tam urban. quam rustic.

— 58, 5 Si servitus vindicetur, etc.

— 58, 6 Quemadmodum serv. amittantur.

— 58, 7 De servitute et aqua.

— 58, 10 De novi operis nunciatione, etc.

— 58, 11 De aedificiis privatis.

— 58, 13 De aqua et aqua pluvia arcenda.

— 58, 14 De interdictis.

— 58, 19 De magnis aqueductibus.

— 58, 20 De aqua quotidiana et aestiva, et de rivis.

— 58, 21 De fonte.

— 58, 22 De cloacis.

HEXABIBLOS, 2, 4 De novis operibus.

— Leges agrariae, 10 De novis operibus.

## C. Praetorian servitudes: (§ 996)

### 1. Emphyteusis and superficies:

#### I. Texts of Roman law: —

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

#### (a) Ante-Justinian:

GAIUS, iii, 145.

CODE THEOD. 5, 12 De fundis patrimonial. et saltuensibus et emphyteuticis, etc.

— 10, 3 De locatione fundorum juris emphyteutici et rei publicae et templorum.

— 11, 19 De collatione fund. patrimonial. vel emphyteuticorum, etc.

#### (b) Justinian:

INST. 3, 24 De locatione, etc., 3 (emphyteusis).

DIG. 43, 18 De superficiebus.

CODE, 4, 66 De emphyteutico jure.

— 11, 62 (61) De fundis patrimonial. et saltuens. et emphyteuticis, etc.

— 11, 63 (62) De mancipiis et colonis . . . et salt. et emphyteutic., etc.

— 11, 64 (63) De fugitiv. colonis . . . emphyteuticis, etc.

— 11, 65 (64) De collatione fundorum emphyteutic.

(§996) Nov. 55 Ut . . . liceat perpetuam emphyteusin . . . ecclesia, etc.

Nov. 120 De alienatione emphyteosi, etc.

(c) **Post-Justinian :**

THEOPHILUS, 3 24 De locatione, etc., 3 (emphyteusis).

ECLOGA, 12 De emphyteusibus, etc.

PROCHIRON, 15 De emphyteusi.

EPANAGOGA, 10 De ecclesiast. emphyteusibus.

BAS. 5, 2 De . . . emphyteuserum ecclesiast.

— 20, 2 De emphyteusi.

— 58, 18 De superficiebus.

HEXABIBLOS, 3, 4 De emphyteusi.

2. **Fiducia, pignus, hypotheca, and privilegium.**

I. **Texts of Roman law :**

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian :**

GAIUS ii, 64.

PAUL. Sent. 2, 4 De . . . pignore fiduciave.

— 2, 5 De pignoribus.

— 2, 13 De lege commissoria.

COD. HERMOGENIAN. De pignoribus.

COD. THEOD. 2, 30 De pignoribus.

— 3, 2 De commissoria rescind.

— 11, 9 De distrahendis pignoribus, etc.

(b) **Justinian :**

INST. 2, 8 Quibus alienare, etc., 1 (hypotheca).

— 4, 6 De action. 7 (hypotheca).

DIG. 13, 7 De pigneraticia actione, etc.

— 18, 3 De lege commissoria.

— 20, 1 De pignoribus et hypothecis, etc.

— 20, 2 In quibus causis pignus vel hypotheca tacite contrahitur.

— 20, 3 Quae res pignori vel hypothecae, etc.

— 20, 4 Qui potiores in pignore vel hypotheca . . . et . . . qui in prior. creditor. locum succedunt.

— 20, 5 De distractione pignorum et hypothecarum.

— 20, 6 Quibus modis pignus vel hypotheca solvitur.

— 43, 25 De remissionibus.

— 43, 32 De migrando.

— 43, 33 De Salviano interdito.

CODE, 2, 28 (29) Si adv. vend. pignoris.

— 4, 24 De actione pigneraticia.



- 4, 51 De . . . prohibita rerum . . . hypotheca.
  - 7, 8 De servo pignori dato, etc.
  - 7, 73 De privilegio fisci.
  - 7, 74 De privilegio dotis.
  - 8, 9 De . . . Salviano interdicto.
  - 8, 13 (14) De pignoribus.
  - 8, 14 (15) In quibus causis pignus tacite contrahitur.
  - 8, 15 (16) Si aliena res pignori data sit.
  - 8, 16 (17) Quae res pignori obligari possunt, etc.
  - 8, 17 (18) Qui potiores in pignore, etc.
  - 8, 18 (19) . . . Qui in prior. creditor. locum succedunt.
  - 8, 19 (20) Si antiquior creditor pignus vend.
  - 8, 20 (21) Si communis res pignorata, etc.
  - 8, 21 (22) De praetorio pignore, etc.
  - 8, 22 (23) Si in causa iudicati pignus, etc.
  - 8, 23 (24) Si pignus pignori datum, etc.
  - 8, 24 (25) De partu pignoris, etc.
  - 8, 25 (26) De remissione pignoris.
  - 8, 26 (27) Etiam ob chirograph. pecuniam pignus, etc.
  - 8, 27 (28) De distrac- (§996) tione pignorum.
  - 8, 28 (29) Debitor. vend. pignorum, etc.
  - 8, 29 (30) Si vendito pignore agatur.
  - 8, 30 (31) De luitione pignoris.
  - 8, 31 (32) Si unus ex pluribus heredibus creditor. vel debitor. partem suam debiti solverit vel acceperit.
  - 8, 32 (33) Si pignoris conventionem, etc.
  - 8, 33 (34) De jure domini impetrando.
  - 8, 34 (35) De pactis pignorum et de commissoria lege . . . rescind.
  - 8, 44 (45) De evictionibus.
  - 8, 45 (46) Creditor. eviction. non debere.
  - Nov. 7 De . . . ecclesiast. rebus . . . in specialem hypothecam, etc.
  - 52 Ut non fiant pignorationes pro aliis personis, etc.
  - 120 De . . . hypothe- cis, etc.
- (c) **Post-Justinian:**
- THEOPHILUS, 2, 8 Quibus alienare, 1.
  - 4, 6 De action., 7.
  - ECLOGA, 10 De . . . pignori- bus, etc.

- (§996) PROCHIRON, 16 . . . De pignore.
- EPANAGOGA, 28 De . . . pignore.
- BAS. 10, 11 Si adv. vend. pignorum.
- 19, 3 De lege commissoria, etc.
- 19, 8 De . . . prohibita rerum . . . hypotheca, etc.
- 25, 1 De pigneratitia actione.
- 25, 2 De pignoribus et hypothecis, etc.
- 25, 3 In quibus causis pignora vel hypothecae tacite contrahantur.
- 25, 4 Quae res pignori vel hypothecae, etc.
- 25, 5 Qui potiores in pignoribus vel hypothecis . . . et . . . qui in prior. creditor. locum succedunt.
- 25, 6 Quomodo et quando militiae pignori, etc.
- 25, 7 De distractione pignorum et hypothecarum.
- 25, 8 Quibus modis pignus vel hypotheca solvatur.
- HEXABIBLOS, 3, 5 De . . . pignore.
- D. Personal, praedial, and praetorian servitudes:**
- I. Modern references:—**
- (a) **In general:**
- ABBOT, Extinguishment of easements by impossibility of user, 13 Columbia Law Rev., p. 409.
- ACTON *v.* BLUNDELL, 12 Meeson and Welsby Excheq. Rep. 342.
- ADMIRALTY lien, 148 U. S. Supreme Ct. Rep., p. 1.
- AMOS, Roman law, pp. 148–54, 174.
- BRISSAUD (Howell, transl.), Hist. of French private law, pp. 408–20, 603, Boston, 1912.
- CAHOON *v.* MIERS, 67 Md. 573.
- CAMPBELL *v.* MESIER, 4 Johns Chan. (N. Y.), 334.
- CHAMPEAUX, Le principe de simplicité des anciens actes jurid. romains et le gage (Mélanges P. F. Girard, vol. i, p. 155, Paris, 1912).
- COLLINET, La tradition des servitudes dans le droit de Justinien (Mélanges P. F. Girard, vol. i, p. 185).
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- MACHELARD, Examen . . . des distinctions . . . en ce qui concerne les servitudes prédiales, Paris, 1868.
- MACKELDEY (Dropsie), Roman law<sup>14</sup>, §§ 304-59.
- MACKENZIE, Roman law<sup>7</sup>, pp. 182-93, 228.
- MOREY, Roman law, pp. 288-301.
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- PERSIL, Régime hypothécaire, Paris, 1833.
- PETIT, Droit romain<sup>7</sup>, §§ 215-54.
- PAMPALONI, La nuda proprietà, etc. (Mélanges P. F. Girard, vol. ii, p. 331, Paris, 1912).
- POSTE, Gaius<sup>4</sup>, pp. 129-46, 327.
- PROUDHON, Traité des droits (§ 996) d'usufruct, Dijon, 1836.
- RABEL, Zu den praetorischen Servituten und den Superficies (Mélanges P. F. Girard, vol. ii, p. 386, Paris, 1912).
- SAVIGNY, Recht des Besitzes<sup>7</sup>, §§ 22a-26, 45-7.
- System, vol. viii, § 368.
- SCHUSTER, German law, §§ 351-406, Oxford, 1907.
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- SEGRÉ, La denominazione "actio confessoria in . . . usufrutto e delli servitù (Mélanges P. F. Girard, vol. ii, p. 511, Paris, 1912).
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(b) **Modern Codes:**—

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ARGENTINA, 2841-3312.

AUSTRIA, 472-530.

CHILE, 732-888, 2384-2491.

FRANCE, 578-710, 2073-2203.

GERMANY, 581-7, 1012-1296.

ITALY, 476-672, 1556-67, 1948-2053.

JAPAN, 265-398.

LOUISIANA, 533-869, 3182-3411.

MEXICO, 865-1058, 1773-1964, 3066-3150.

PHILIPPINES (same as Spain: but see Willard, Notes to Spanish Code, Manila, 1904).

PORTO RICO, 469-615, 1758-1830.

QUEBEC, 443-582, 1966-2182.

RUSSIA, 433-51, 1587-1678.

SPAIN, 467-608, 1857-1929.

SWITZERLAND, 667-712, 730-918.

II. See also *infra* § 1024; *supra* vol. ii, §§ 582-624, 763, 939.

§ 997 **Occupancy, accession, delivery, and adjudication: references.**

A. **Occupancy:**

I. **Texts of Roman law:**—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

GAIUS, ii, 65-9, 72.

COD. THEOD. 10, 18 De thesauris.

— 15, 11 De venatione ferarum.

(b) **Justinian:**

INST. 2, 1 De rerum divisione, 11-19, 22, 39, 47-8.

DIG. 41, 1 De acquirendo rerum dominio.

CODE, 10, 15 De thesauris.

— 11, 45 (44) De venatione ferarum.

(c) **Post-Justinian:**

THEOPHILUS, 2 1 De rerum divisione, 11-19, 22, 39, 47-8.

BAS. 50, 1 De dominio ex variis modis, etc.

HEXABIBLOS, 2, 6 De . . . inventione thesauri.

B. **Accession:**

I. **Texts of Roman law:**—

For Eng. transl., see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, vi, 7-9.

GAIUS, 2, 71-78.

NOV. THEOD. 20 De adluvionibus.

(b) **Justinian:**

INST. 2, 1 De rerum divisione, 20-34.

DIG. 22, 1 De usuris et fructibus . . . et . . . accession., etc.

— 41, 1 De adq. rerum dominio.

— 43, 28 De glande legenda.

CODE, 6 47 De usuris et fructibus, etc.

— 7, 41 De adluvion., etc.

(c) **Post-Justinian:**

THEOPHILUS, 2, 1 De rerum divisione, 20-34.

BAS. 50, 1 De dominio ex variis modis, etc.

— 50, 16 De alluvione.

HEXABIBLOS, 2, 1 De . . . dominio.

**C. Delivery (traditio):**

**I. Texts of Roman law: —**

For Eng. transl., see supra §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, vi, 10.

ULPIAN, Reg. 19 De . . . acquisition. rerum.

(b) **Justinian:**

INST. 2, 1 De rerum divisione, 40-41, 44-6.

DIG. 41, 1 De acquirendo rer. (§997) dominio.

(c) **Post-Justinian:**

THEOPHILUS, 2, 1 De rer. divisione, 40-41, 44-6.

BAS. 50, 1 De dominio ex variis modis, etc.

**D. Adjudication:**

**I. Texts of Roman law: —**

For Eng. transl., see supra §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, vii, 5; xii, 3.

PAUL. Sent. 1, 16 Finium regundorum.

— 1, 18 De familiae herciscundae.

ULPIAN, Reg. 19 De . . . acquisition. rerum.

COD. GREGORIAN. 3 De familiae herciscundae et communi dividundo.

COD. THEOD. 2, 24 De familiae herciscundae.

— 2, 25 De communi dividundo.

— 2, 26 De finium regundorum.

(b) **Justinian:**

INST. 4, 17 De officio judicis, 4-7.

DIG. 10, 1 Finium regundorum.

(§997) — 10, 2 *Familiae erciscundae*.

— 10, 3 *Communi dividundo*.

CODE, 3 36 *Familiae erciscundae*.

— 3, 37 *Communi dividundo*.

— 3, 38 *Communia . . . familiae erciscundae quam communi dividundo*.

— 3, 39 *Finium regund*.

— 6, 59 *Communia de successionibus*.

### (c) **Post-Justinian:**

THEOPHILUS, 4, 17 *De officio iudicis*, 4-7.

BAS. 12, 2 *De rerum communium divisione*.

— 12, 3 *Communia . . . familiae erciscundae quam communi dividundo*.

— 42, 3 *Familiae erciscundae*.

— 58, 9 *De finibus regund*.

### **E. Occupancy, accession, delivery, and adjudication:**

#### **I. Modern References:—**

##### (a) **In general:**

AMOS, *Roman law*, pp. 160-7.

ARNO, *Textura* (Mélanges P. F. Girard, vol. i, p. 27, Paris, 1912).

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*tesoro* (Mélanges P. F. Girard, vol. i, p. 122).

BRISSAUD (Howell), *Hist. of French priv. law*, pp. 367-98, Boston, 1912.

COCHRANE *v.* MOORE, L. R. 25 Q. B. Div., 57.

COLLINET, *La tradition des servitudes*, etc. (Mélanges P. F. Girard, vol. i, p. 185).

COLQUHOUN, *Rom. law*, §§965-1001.

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GERVAIS, *De la condition légale des lapins de garennes, des poissons d'étangs et des pigeons de colombiers*, 33 *Revue gén. du droit*, p. 193.

GIRARD, *Droit romain*<sup>5</sup>, pp. 293, 313, 316, 318.

HUNTER, *Roman law*<sup>4</sup>, pp. 255, 274, 282, 988.

LAMBERT, *La tradition romaine*, Paris, 1901.

MACKELDEY (Dropsie), *Roman law*<sup>14</sup>, §§ 166, 167, 270, 280, 281.

MACKENZIE, *R. law*<sup>7</sup>, pp. 173-9.

MOREY, *R. law*, pp. 302-12.

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PETIT, *Droit romain*<sup>7</sup>, §§ 172–91, 213.

PETOT, *Fructus duplio* (*Études d'hist. jurid. off.* à P. F. Girard, p. 211, Paris, 1913).

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## (b) Modern Codes:

References are to the Civil Code, unless otherwise stated.

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AUSTRIA, 380–446.

CHILE, 606–99.

FRANCE, 544–77, 1604–24.

GERMANY, 929–84.

ITALY, 436–75, 711–19.

JAPAN, 239–48.

LOUISIANA, 499–532, 2477–90.

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PORTO RICO, 360–91, 1365–76.

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SWITZERLAND, 642–54, 657–64, 714–27.

II. See also *supra* § 995; vol. ii, §§ 625–44.

## Prescription: references.

§ 998

### I. Texts of Roman law:—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

#### (a) Ante-Justinian:

XII TABLES, vi, 3 and 5; vii, 4, 6–8; viii, 17; x, 11.

GAIUS, ii, 43–61.

PAUL. Sent. 1, 17 De servitutibus.

— 5, 2 De usucapione.

ULPIAN, Reg. 19. De dominiis, etc.

COD. THEOD. 2, 6. De temporum cursu, etc.

— 4, 11 De longi temporis praescriptione.

— 4, 14 De actionibus certo tempore finiendis.

— 4, 15 De quinquennii praescriptione.

NOV. THEOD. De amota milit. fori praescriptione.

(§ 998) NOV. VALENTINIAN. 27 De  
xxx ann. praescriptione,  
etc.

(b) **Justinian:**

INST. 2, 6 De usucapion. et  
longi temporis possession.

DIG. 6, 2 De Publiciana in  
rem actione.

— 41, 3 De usurpation. et  
usucapion.

— 41, 4 Pro emptore.

— 41, 5 Pro . . . posses-  
sore.

— 41, 6 Pro donato.

— 41, 7 Pro derelicto.

— 41, 8 Pro legato.

— 41, 9 Pro dote.

— 41, 10 Pro suo.

— 43, 2 Quorum bonorum.

— 43, 3 Quod legatum.

— 43, 4 Ne vis fiat ei, qui in  
possession. missus, etc.

— 43, 17 Uti possidetis.

— 43, 22 De fonte.

— 43, 24 Quod vi aut clam.

— 43, 31 Utrubi.

— 44, 3 De diversis prae-  
scription., etc.

CODE, 2 35 (36) Si adv.  
usucapion.

— 7, 22 De longi temporis  
praescriptione, etc.

— 7, 26 De usucapion. pro  
emptore, etc.

— 7, 27 De usucapion. pro  
donato.

— 7, 28 De usucapion. pro  
dote.

— 7, 29 De usucapion. pro  
herede.

— 7, 30 Communia de usu-  
capion.

— 7, 31 De usucapion. trans-  
form., etc.

— 7, 32 De adq. et retin.  
possession.

— 7, 33 De praescriptione  
. . . x vel xx ann.

— 7, 34 In quibus causis  
cessat . . . praescriptio.

— 7, 35 Quibus non obic-  
iatur . . . praescriptio.

— 7, 36 Adv. creditor.

— 7, 37 De quadrennii prae-  
scriptione.

— 7, 38 Ne rei domenicae  
vel templorum vindicatio  
temporis exceptione sub-  
moveatur.

— 7, 39 De praescription.  
xxx vel xl ann.

— 7, 40 De . . . praescrip-  
tion. et interruption.

— 8, 6 Uti possidetis.

NOV. 9 Ut ecclesia Romana  
centum ann. habeat prae-  
scription.

— 111 Haec const. innovat.  
const. quae praescription.  
centum ann. . . . dederat.

EDICTA (appendix to NOV.)  
5.

(c) **Post-Justinian:**

THEOPHILUS, 2, 6 De ususca-  
pion. et longi temporis prae-  
scription.



- BAS. 10, 18 Si adv. usucapion.  
 — 44, 25 De possession. et usucapion., etc.  
 — 45, 6 De Armeniis, et . . . Rom. leges sequantur.  
 — 48, 24 De long. temp. praescription., etc.  
 — 50, 3 De usurpation. et possession.  
 — 50, 4 Pro emtore.  
 — 50, 5 Pro . . . bonorum possessore.  
 — 50, 6 De donatis.  
 — 50, 8 De dote.  
 — 50, 9 De rebus . . . pro suis, etc.  
 — 50, 10 De dominio per usum non acq. communiter.  
 — 50, 11 De praescription. . . . x vel xx ann.  
 — 50, 12 In quibus causis cesset . . . praescriptis, etc.  
 — 50, 13 De quadrennii praescriptione, etc.  
 — 50, 14 Adv. creditor.; et de praescription. xxx vel xl ann.  
 — 50, 15 De . . . diversis . . . praescription. et interruption.  
 — 51, 3 De diversis . . . praescription., etc.  
 — 53, 3 De naufragio, etc.  
 — 58, 17 Interdict. ad retin. possession.  
 — 58, 23 Quod vi aut clam.  
 HEXABIBLOS, 1, 3 De action. et temporibus.  
 — 2, 1 De . . . dominio.

**II. Modern references:— (§998)**

**(a) In general:**

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 BRISSAUD (Howell), Hist. of French private law, pp. 351-63, Boston, 1912.  
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 MACKELDEY (Dropsie), Roman law<sup>14</sup>, §§ 285-92, 213.  
 MACKENZIE, Roman law<sup>7</sup>, pp. 194-203.  
 MOREY, Roman law, pp. 309-11.  
 MOYLE, Inst. of Justinian, vol. i, 5th ed., p. 225.  
 PETIT, Droit romain<sup>7</sup>, §§ 197-212.  
 POSTE, Gaius<sup>4</sup>, pp. 132-57.  
 RALSTON, Prescription, 4 Am. Journ. of Internat. Law, p. 133.  
 SAvIGNY, Recht d. Besitzes, §§ 24, 29-43.

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SCHUSTER, German law, §§ 131–7, Oxford, 1907.

SOHM (Ledlie<sup>3</sup>), Roman law, pp. 318–22.

TEISEN, Adverse possession — prescription, 2 Am. Bar Ass'n Journal, p. 126.

(b) **Modern Codes:**

References are to Civil Code, unless otherwise stated.

ARGENTINA, 3981–4077.

AUSTRIA, 1451–1502.

CHILE, 2492–524.

FRANCE, 2219–81.

GERMANY, 186–225.

ITALY, 2105–47.

JAPAN, 144–74.

LOUISIANA, 3457–3555.

MEXICO, 1059–1129.

PHILIPPINES (same as Spain, but see Willard, Notes on Spanish Code, pp. 83–4, Manila, 1904).

PORTO RICO, 1831–76.

QUEBEC, 2201–70.

RUSSIA, 557–67.

SPAIN, 1930–75.

SWITZERLAND, 661–4, 728.

III. See also *supra* §995; vol. ii, §§ 645–56.

§ 999 **Gift: references.**

I. **Texts of Roman law:—**

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

GAIUS, ii, 228.

PAUL. Sent. 3, 7 De mortis causa donation.

— 5, 11 De donation.

ULPIAN, Reg. 15 De decimis.

COD. GREGORIAN. 13 De donation., etc.

COD. HERMOGENIAN. De donation.

COD. THEOD. 2, 20 De inofficiosus donation.

— 8, 12 De donation.

— 8, 13 De revocandis don.

NOV. LEO and SEVERUS, 1.

NOV. VALENTINIAN. 32 De confirmandis . donata., etc.

VATICAN FRAG. 248–59 Quando donator intellegatur revocasse voluntatem.

— 260–316 Ad legem Cinciam de donation.

(b) **Justinian:**

INST. 2, 7 De donation.

— 2, 22 De lege Falcidia, 1.

DIG. 37, 7 De dotis collatione.

— 39, 5 De donation.

— 39, 6 De mortis causa donation.

— 41, 6 Pro donato.

CODE, 2, 29 (30) Si adv. donation.

— 3, 29 De inofficiosis donation.

— 5, 16 De donation. inter vir. et uxor. et a. parent. in liberos, etc.

— 7, 27 De usucapion. pro donato.

— 8, 53 (54) De donation.

— 8, 54 (55) De donation . . . sub modo, etc.

— 8, 56 (57) De mortis causa donation.

Nov. 52 Ut . . . neque a privatis in imperator. factae donationes indigeant.

— 73 De instrument., etc.

— 87 De mortis causa donation., etc.

— 162 Sacra forma transmissa dominico, etc., 1.

### (c) Post-Justinian:

THEOPHILUS, 2, 7 De donation.

— 2, 22 De lege Falcidia, 1.

ECLOGA, 4 De donation., etc.

PROCHIRON, 12 De donation.

— 13 De revocandis donation.

EPANAGOGA, 22 De revocandis donation.

BAS. 10, 12 Si adv. donation.

— 19, 14 De fundo sine pub. tributis . . . donando.

— 41, 5 De immensis donation. in liberos collatis.

— 47, 1 De donation. inter vivos.

— 47, 2 De revocation. don. (§ 999)

— 47, 3 De mortis causa donation.

— 50, 6 De donatis.

— 60, 42 De iis, quibus ut indignis relicta, etc.

HEXABIBLOS, 3, 1 De don.

— 3, 2 De revoc. donation.

## II. Modern references:—

### (a) In general:

AMOS, Roman law, pp. 335.

BRISSAUD (Howell), Hist. of French priv. law, pp. 675, 684, 703, Boston, 1912.

COCHRANE v. MOORE, L. R. 25 Q. B. Div., 57.

COLQUHOUN, Roman law, §§ 1050-75.

DUQUESNE, Donatio, etc. (Mélanges P. F. Girard, vol. i, p. 389, Paris, 1912).

FENNER, An example of Homeric nodding in relation to the reduction of donations inter vivos, 1 So. Law Qt., p. 129.

GAVET, De l'allegatio gestis (Mélanges P. F. Girard, vol. i, p. 499).

GIRARD, Droit romain<sup>5</sup>, pp. 935-49.

HUNTER, Roman law<sup>4</sup>, pp. 318, 915.

MACKELDEY (Dropsie), Roman Law<sup>14</sup>, §§ 463-9.

MACKENZIE, Roman law<sup>7</sup>, pp. 257-61.

- MONNIER, *La Novelle 50 de Leon la Sage et l'insinuation des donations* (Mélanges P. F. Girard, vol. ii, p. 236).
- MOYLE, *Inst. of Justinian*, vol. i, 5th ed. p. 232.
- PETIT, *Droit romain*<sup>7</sup>, §§ 416, 426.
- POSTE, *Gaius*<sup>4</sup>, p. 367.
- RICCOBONO, *La forma delle donazione, etc.* (Mélanges P. F. Girard, vol. ii, p. 415).
- ROBY, *Rom. priv. law*, vol. i, p. 525.
- SAVIGNY, *System*, vol. iv, §§ 142-76, appendices 9 and 10.
- SCHUSTER, *German law*, §§ 199-204, Oxford, 1907.
- SOHM (*Ledlie*<sup>3</sup>), *Roman law*, pp. 206-12.
- (b) **Modern Codes:**
- References are to the Civil Code, unless otherwise stated.
- ARGENTINA, 1823-1902.
- AUSTRIA, 938-56.
- CHILE, 953, 1136-46, 1386-1436.
- FRANCE, 711, 893-1100.
- GERMANY, 516-34.
- ITALY, 710, 1050-96.
- JAPAN, 549-54.
- LOUISIANA, 1467-1570, 1734-55.
- MEXICO, 2594-2660.
- PHILIPPINES, 618-56.
- PORTO RICO, 625-64.
- QUEBEC, 754-830.
- RUSSIA, 967-93.
- SPAIN, 618-56.
- SWITZERLAND (*Code of Obligations*, 239-52).
- III. See also *supra* § 988; vol. ii, §§ 477-80, 657-60.

### § 1000 Inheritance and intestate succession: references.

- I. **Texts of Roman law:—**
- For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.
- (a) **Ante-Justinian:**
- XII TABLES, v, 4-5, 8-10.
- GAIUS, i, 156; ii, 97-100, 152-73; iii, 1-85.
- PAULUS, *Sent.* 1, 11 *De satisfaciendo*.
- 1, 13b *Si hereditas . . . petatur*.
- 3, 1 *De Carboniano edicto*.
- 3, 1a (*bonorum possessio*).
- 3, 2 *De bonis liberti*.
- 3, 3 *De lege Fabiana*.
- 3, 5 *Ad SC. Silianum*.
- 4, 4 *De repudiando hereditate*.

- 4, 8 De intestatorum successione.
- 4, 9 Ad SC. Tertullianum.
- 4, 10 (on intestacy).
- 4, 11 De gradibus.
- 5, 12 De jure fisci, etc.
- ULPIAN, Reg. 15 De decimis.
- 17, De caducis.
- 18, Qui habeant jus antiquum in caducis.
- 26, De legitimis heredibus.
- 27, De libertorum succession.
- 28, De possessionibus dandis.
- 29, De bonis libertorum.
- COD. GREGORIAN. 2, 17 Si ut se hereditate, etc.
- COD. HERMOGENIAN. De successionibus.
- COD. THEOD. 2, 22 De hereditatis petitione.
- 4, 1 De creatione vel bonorum possessione.
- 4, 2 Unde liberi.
- 4, 3 De Carboniano edicto.
- 4, 6 De natural. filiis et matribus.
- 4, 21 Quorum bonorum.
- 5, 1 De legitimis hereditatibus.
- 5, 2 De decurion.
- 5, 3 De clericorum, etc.
- 5, 6 De bonis militum.
- 8, 16 De infirmandis poenis caelibatus et orbitatis.
- 8, 17 De jure liberorum. (§ 1000)
- 10, 8 De bonis vacantibus.
- 10, 9 De incorporatione.
- COLL. MOSAIC. ET ROM. 16 De legitima successione.
- NOV. ANTHEMIUS, 3 De bonis vacantibus.
- NOV. MARJORIAN. 5 De bonis caducis, etc.
- 6 De sanctimonialibus vel viduis et de succession. earum.
- NOV. VALENTINIAN. 3 De succession. curial. qui ad clericatum, etc.
- 14 De fructibus inter maritum et uxorem expensis filiis vel hered. non imputandis.
- 25 De libertis et succession.
- (b) **Justinian:**
- INST. 1, 15 De legit. adgnatorum, etc.
- 2, 9 Per quas personas, etc., 6.
- 2, 19 De heredum qualitate et differentia.
- 3, 1 De hereditatibus . . . ab intestato, etc.
- 3, 2 De legit. adgnatorum succession.
- 3, 3 De SC. Tertulliano.
- 3, 4 De SC. Orphitiano.
- 3, 5 De succession. cognat.
- 3, 6 De gradibus cognat.

- (§ 1000) — 3, 7 De successione libertorum.
- 3, 8 De adsignatione libertorum.
- 3, 9 De bonorum possessionibus.
- DIG. 5, 3 De hereditatis petitione.
- 5, 4 Si pars hereditatis petatur.
- 5, 5 De possessoria hereditate.
- 11, 7 De religiosis et sumptibus funerum, etc.
- 11, 8 De mortuo inferendo et sepulchro aedificando.
- 25, 4 De . . . ventre eustodiendoque partu.
- 25, 6 Si mulier ventris, etc.
- 28, 8 De jure deliberandi.
- 29, 2 De adq. vel omit. hereditate.
- 29, 4 Si quis ommissa causa testamenti ab intestato possideat hered.
- 29, 5 De SC. Siliano, etc.
- 37, 1 De bonorum possessionibus.
- 37, 2 Si tabulae testamenti extabunt.
- 37, 3 De bonorum possessione furioso, etc.
- 37, 4 De bonorum possessione contra tabulas.
- 37, 5 De legatis praestandis contra tabulas bonorum possessionis petita.
- 37, 6 De collatione bonorum.
- 37, 7 De dotis collatione.
- 37, 8 De conjungendis cum emancipato liberis.
- 37, 9 De ventre in possessionem mittendo, etc.
- 37, 10 De Carboniano edicto.
- 37, 11 De bonorum possessione secundum tabulas.
- 37, 12 Si a parente quis manumissus, etc.
- 37, 13 De bonorum possessione ex testamenti militis.
- 37, 14 De jure patronatus.
- 37, 15 De obsequiis parentibus et patroni, etc.
- 38, 1-5 De actione in successione to freedmen.
- 38, 6 Si . . . unde liberi.
- 38, 7 Unde legitimi.
- 38, 8 Unde cognati.
- 38, 9 De successorio edicto.
- 38, 10 De gradibus, etc.
- 38, 11 Unde vir et uxor.
- 38, 12 De veteranorum et militum successione.
- 38, 15 Quis ordo in possessionibus, etc.
- 38, 16 De suis et legitimis heredibus.
- 38, 17 Ad SC. Tertullianum et Orphitianum.
- 41, 5 Pro herede vel pro possessore.

- 42, 5 De separationibus.
- 47, 19 Expilatae hereditatis.
- 47, 23 De popular. action.
- CODE, 2, 38 (39) Si ut se hereditate abstineat.
- 2, 39 (40) Si ut omissam hereditatem, etc.
- 3, 20 Ubi de hereditate agatur.
- 3, 31 De petition. hered.
- 3, 44 De relig. et sumptibus funerum.
- 4, 11 Ut actiones et ab herede et contra heredem incipiant.
- 4, 12 Ne uxor pro marito, vel marit. pro ux. vel mater pro filio, etc.
- 4, 16 De action. hered.
- 4, 17 Ex delictis defunctorum in quantum heredes conveniantur.
- 4, 39 De hered. vel action. vendita.
- 6, 9 Qui admitti ad bonorum possessionem, etc.
- 6, 10 Quando non petentium partes . . . ad crescunt.
- 6, 14 Unde liberi.
- 6, 15 Unde legitimi.
- 6, 16 De edicto successorio.
- 6, 17 De Carboniano edicto.
- 6, 18 Unde vir et uxor.
- 6, 19 De repud. bonorum possessione.
- 6, 20 De collationibus. (§ 1000)
- 6, 27 De necessariis et servis heredibus, etc.
- 6, 30 De jure deliberandi et de adeunda . . . hered.
- 6, 31 De repud. vel abstinend hered.
- 6, 35 . . . ad SC. Silianum.
- 6, 48 De incertis personis.
- 6, 51 De caducis tollendis.
- 6, 52 De his qui ante apertas tabulas hered. transmittunt.
- 6, 55 De suis et legitimis liberis et ex filia nepotibus ab intestato, etc.
- 6, 56 Ad SC. Tertulianum.
- 6, 57 Ad SC. Orfitianum.
- 6, 58 De legit. heredibus.
- 6, 59 Communia de successionibus.
- 6, 60 De bonis maternis, etc.
- 6, 61 De bonis quae liberis in postestate constitutis, etc.
- 6, 62 De hereditat. decurionum, naviculariorum, etc.
- 7, 29 De usucapione pro herede.
- 7, 72 . . . de separationibus.
- 8, 2 Quorum bonorum.
- 8, 57 (58) De infirmendis poenis caelibatus et orbitatis, etc.

- (§ 1000) — 10, 10 De bonis vacantibus, etc.  
 — 10, 13 De his qui se deferunt.  
 — 10, 14 Si liberalitatis imperial. socius sine herede, etc.  
 — 10, 35 (34) Quando et quibus debetur quarta para decurion., etc.  
 — 10, 63 (61) De periculo successorum parentis.  
 Nov. 2 De non eligendo secundo nubentes mulieres . . . et de succession. earum filiis suis.  
 — 18 De triente et semisse et succession. filiorum et nepotum naturalium vel collation., etc.  
 — 21 De Armeniis ut ipsi . . . sequantur Romanorum leges.  
 — 36 Ut hi qui in Africa, etc.  
 — 68 Ut constitutio . . . quae in successionibus in lucra nuptialia ex orbitatis, etc.  
 — 89 Quibus modis naturales efficiuntur sui.  
 — 101 De donationibus a curialibus factis suis, etc.  
 — 118 De heredibus ab intestato venientibus et de agnatorum jure sublato.  
 — 127 De fratris filiis succedentibus una cum ascendentibus, etc.  
 — 131 De ecclesiasticis titulis.  
 — 158 Ut deliberandi jus . . . transmittatur.  
 — 164 De hereditatibus.  
 EDICTA (in appendix to Nov.)  
 3 De Armeniorum successionem.  
 (c) **Post-Justinian:**  
 THEOPHILUS, i, 15; 11, 9, § 6; ii, 19; iii, 1-9. The titles of these are the same as supra (b), INST. 1, 15-3, 9.  
 PROCHIRON, 30 De heredibus.  
 — 37 De tempore quo creditores adv. heredes, etc.  
 EPANAGOGA, 33 De heredibus.  
 — 35 De temporibus quibus creditores adv. heredes defuncti, etc.  
 BAS. 9, 6 Quibus ex causis in possession. mittantur.  
 — 9, 7, 38-44 on separatio bonorum.  
 — 10, 21 Si quis se hereditate absteineat.  
 — 10, 22 Si quis hered. certam vel bonorum possessionem . . . omiserit.  
 — 15, 4 De rebus exhibendis, etc.  
 — 24, 7 De action. hered. et in quantum heredes teneantur ex delictis defunctorum.  
 — 31, 8 Si mulier ventris, etc.



- 31, 9 Si mulier ventris, etc.
  - 35, 2 De conditional. institutionibus.
  - 35, 14 . . . de bonorum possessione.
  - 35, 15 Si quis omissa causa testamenti ab intestato hered. possideat.
  - 35, 17 De bonorum poss. secundum tabulas.
  - 35, 18 Ut deliberandi jus . . . transmit.
  - 40, 1 De bonorum possessione proprie sumta.
  - 40, 2 De bonorum possessione furiosi, etc.
  - 40, 3 De bonorum poss. contra tabulas.
  - 40, 4 De conjungendo cum emancipato filio, etc.
  - 40, 5 De Carboniano edicto, etc.
  - 40, 6 Si a parent. quis emancipatus, etc.
  - 40, 7 . . . et de bon. poss. secundum tabulas et de bon. poss. libertorum.
  - 40, 8 De repud. bonorum possessionem et unde legitimi.
  - 40, 9 De bonorum possessione et de petitione hereditatis.
  - 41, 6 De jure jurando, . . . defunctus substantiae, etc.
  - 41, 7 De collatione bonorum.
  - 42, 1 De petitione hered., (§ 1000) etc.
  - 42, 2 Si pars hereditatis petatur, et de possessoria, etc.
  - 44, 29 Quod non dictatur liberis orbatus, etc.
  - 45, 1 De successione ab intestato cognatorum.
  - 45, 2 Actio, quam lex dat cognatis.
  - 45, 3 De gradibus cognatorum, . . . et quod ex aequo succedant per virilem et femininum sexum cognati.
  - 45, 5 Actio, per quam vir vel uxor, si cognati non sint, sibi invicem succedunt.
  - 45, 6 De Armeniis, ut . . . Roman. leges sequantur.
  - 50, 5 De herede aut bonorum possessore.
  - 60, 29 De expilata hereditate.
- HEXABIBLOS, 5, 8 De heredibus.
- 5, 13 (12) Quo tempore creditores adv. defuncti heredes agere possunt.
- II. Modern references:—**
- (a) **In general:**
- AMOS, Roman law, pp. 308 et seq.
- BALLANTINE, Our grotesque inheritance laws, 25 Green Bag, 253.

- (§ 1000) BRISSAUD (Howell), *Hist. of French private law*, pp. 626-57.
- COLQUHOUN, *Roman law*, §§ 1359-1460.
- ECONOMIDES, *Succession ab intestato*, in the *New Pandects*, V (in Greek).
- FLACH, *La bonorum possessio sous les empereurs depuis le 2<sup>e</sup> siècle jusqu'à Justinien*, Paris, 1870.
- GIRARD, *Manuel de droit romain*<sup>5</sup>, pp. 842-51.
- HUNTER, *Roman law*<sup>4</sup>, pp. 830-74.
- LAMBERT, *La fonction du droit civil comparé*, First series, 1903.
- LEE, *Intestate succession of husband and wife in Roman-Dutch law*, 26 *Journal of Comparative Legis.* p. 310 (May, 1912).
- MACKELDEY (Dropsie), *Roman law*<sup>14</sup>, §§ 649-82.
- MACKENZIE, *Roman law*<sup>7</sup>, pp. 323-42.
- MEARS, *Gaius and Justinian*, ch. i, London, 1882.
- MOREY, *R. law*, pp. 313, 329.
- PAPARRIGOPOULO, *Law of successions* (in Greek).
- PETIT, *Droit romain*<sup>7</sup>, §§ 657 et seq.
- POLYGENES, *The law of succession* (in Greek).
- ROGUIN, *Traité de droit civil comparé*, 2 vols. Paris, 1908.
- SAVIGNY, *System*, vol. viii, §§ 375-8, 393-5, 399.
- SCHMIDT, *De successione fisci in bona vacan.*, Jena, 1836.
- SCHUSTER, *German civil law*, §§ 468 et seq.
- SOHM (Ledlie<sup>3</sup>), *Roman law*, pp. 502-39.
- THOMPSON, *The right of the adopted child in int. succession*, 2 *Am. Bar Ass'n Journal*, p. 135.
- (b) **Modern Codes:**
- References are to the Civil Code, unless otherwise stated.
- ARGENTINA, 3313-3624.
- AUSTRIA, 531-51, 727-61, 797-824.
- CHILE, 980-98, 1222-69.
- FRANCE, 718-892.
- GERMANY, 1922-2063.
- ITALY, 720-58, 923-1049.
- JAPAN, 964-1059.
- LOUISIANA, 870-1464.
- MEXICO, 3571-3702.
- PHILIPPINES, 912-1087. (But see WILLARD, *Notes to Spanish Civil Code*, pp. 59-66, Manila, 1904.)
- PORTO RICO, 886-1054.
- QUEBEC, 596-751.
- RUSSIA, 1104-1373.
- SPAIN, 912-1087.
- SWITZERLAND, 457-66, 537-640.
- III. See also *infra* § 1001; *supra* vol. ii, §§ 661-77.

**Wills, legacies, trusts (fideicommissa), and codicils: refer-§ 1001  
ences.**

**I. Texts of Roman law: —**

For English translations, see  
supra §§ 945, 946, 948, 951,  
952, 955.

**(a) Ante-Justinian:**

XII TABLES, v, 3, 9-10.

GAIUS, ii, 115-289.

PAULUS, Sent. 3, 4a De testa-  
mentis.

— 3, 4b De institutione  
heredum.

— 3, 5a (codicils).

— 3, 6 De legatis.

— 3, 8 Ad legem Falcidiam.

— 3, 9 (legacy and fideicom.).

— 4, 1 De fideicommissis.

— 4, 2 De SC. Trebelliano.

— 4, 3 De SC. Pegasiano.

— 4, 5 De inofficiosi quer-  
ela.

— 4, 7 De lege Cornelia.

— 4, 13 De fideicom. liber-  
tatibus.

— 5, 12 De jure fisci, etc.

— 5, 25 Ad legem Corne-  
liam testamentariam.

ULPIAN, Reg. 17 De caducis.

— 18 Qui habeant jus anti-  
quum in caducis.

— 20 De testamentis.

— 21 Quemadmodum heres  
instituti debeant.

— 22 Qui heredes instituti  
possunt.

— 23 Quemadmodum tes-  
tamenta rumpuntur.

— 24 De legatis.

— 25 De fideicommissis.

COD. GREGORIAN. 2 De in-  
officioso testamento.

COD. HERMOGENIAN. De suc-  
cessionibus.

— De testamentis.

COD. THEOD. 2, 19 De inoffi-  
cioso testamento.

— 2, 20 De inoffic. donation.

— 2, 21 De inoffic. dotibus.

— 4, 4 De testamentis et  
codicillis.

— 6, 22 De honorariis codi-  
cillis.

NOV. MARCIAN. 5 De testa-  
mentis clericorum.

NOV. THEOD. 16 De testa-  
mentis.

NOV. VALENTINIAN. 21 De  
testamentis.

**(b) Justinian:**

INST. 2, 7 De donation., 1.

— 2, 9 Per quas personas,  
etc. 6.

— 2, 10 De testamentis or-  
dinandis.

— 2, 11 De militari testa-  
mento.

— 2, 12 Quibus non est  
permisum testamenta  
facere.

— 2, 13 De exheredatione  
liberorum.

- (§1001) — 2, 14 De heredibus instituendis.
- 2, 15 De vulgari substitutione.
- 2, 16 De pupillari substitutione.
- 2, 17 Quibus modis testamenta infirmantur.
- 2, 18 De inofficioso testamento.
- 2, 19 De heredum qualitate et differentia.
- 2, 20 De legatis.
- 2, 21 De ademptione legatorum.
- 2, 22 De lege Falcidia.
- 2, 23 De fideicommissariis hereditatibus.
- 2, 24 De singulis rebus per fideicommissum relictis.
- 2, 25 De codicillis.
- DIG. 5, 2 De inofficioso testamento.
- 5, 6 De fideicom. hered. petitione.
- 28, 1 Qui testamenta facere possunt et quemadmodum, etc.
- 28, 2 De liberis et postumis heredibus inst. vel exhered.
- 28, 3 De injusto rupto irritato testamento.
- 28, 4 De his quae in testamento delentur induc. vel inscribuntur.
- 28, 5 De heredibus instituendis.
- 28, 6 De vulgari et pupillari substitutione.
- 28, 7 De condicionibus institutionum.
- 28, 8 De jure deliberandi.
- 29, 1 De testamento militis.
- 29, 2 De adquir. vel omit. hereditate.
- 29, 3 Testamenta quemadmodum aperiantur, etc.
- 29, 4 Si quis ommissa causa testamenti ab intestato . . . possideat hereditatem.
- 29, 5 De SC. Siliano et Claudiano; quorum testamenta ne aperiantur.
- 29, 6 Si quis aliquem testari prohibuerit, etc.
- 29, 7 De jure codicillorum.
- 30 De legatis et fideicommissis.
- 31 De legatis et fideicommissis.
- 32 De legatis et fideicommissis.
- 33, 1 De annuis legatis et fideicommissis.
- 33, 2 De usu et usu fructu et redditu . . . per legatum vel fideicom. datis.
- 33, 3 De servitute legata.
- 33, 4 De dote praelegata.
- 33, 5 De optione vel electione legata.
- 33, 6 De tritico vino vel oleo legata.

- 33, 7 De instructo instrumento legato.
- 33, 8 De peculio legato.
- 33, 9 De penu legata.
- 33, 10 De suppellectile legata.
- 34, 1 De alimentis . . . legatis.
- 34, 2 De auro argento . . . veste . . . et statu legatis.
- 34, 3 De liberatione legata.
- 34, 4 De adimendis vel transfer. legatis vel fideicommissis.
- 34, 5 De rebus dubiis.
- 34, 6 De his quae poenae causa relinq.
- 34, 7 De regula Catoniana.
- 34, 8 De his quae pro non scriptis habentur.
- 34, 9 De his quae ut indignis auferuntur.
- 35, 1 De condicionibus et . . . demonstration. . . . quae in testamentis, etc.
- 35, 2 Ad legem Falcidiam.
- 35, 3 Si cui plus, quam per legem Falcidiam lic., legatum, etc.
- 36, 1 Ad SC. Trebellianum.
- 36, 2 Quando dies legatorum vel fideicommissorum cedat.
- 36, 3 Ut legatorum seu fideicom. servand. causa (§ 1001) caveatur.
- 36, 4 Ut in possession. legatorum vel fideicom. servand. causa esse liceat.
- 37, 2 Si tabulas testamenti extabunt.
- 37, 4 De bonorum possessio contra tabulas.
- 37, 5 De legatis praestandis contra tabulas bon. poss. petita.
- 37, 11 De bonorum possessione secundum tabulas.
- 37, 13 De bonorum poss. ex testamento militis.
- 40, 5 De fideicom. libertatibus.
- 41, 8 Pro legato.
- 43, 3 Quod legatum.
- 43, 5 De tabulis exhibendis.
- 47, 4 Si quis, qui testamento liber esse jussus . . . post mortem domini ante aditam hered. subripuisse, etc.
- 50, 16 De verborum significatione.
- CODE, 3, 17 Ubi fideicom. peti oportet.
- 3, 28 De inofficiosi testamento.
- 3, 29 De inoffic. donation.
- 3, 30 De inoffic. dotibus.
- 6, 11 De bonorum poss. secundum tabulas.
- 6, 12 De bonorum poss. contra tabulas.

- (§ 1001) — 6, 13 De bonorum poss. contra tabulas liberti, etc.  
 — 6, 21 De testamento militis.  
 — 6, 22 Qui facere testamentum possunt, etc.  
 — 6, 23 De testamentis, quemadmodum . . . ordinantur.  
 — 6, 24 De heredibus instituendis, etc.  
 — 6, 25 De instituendis vel substitutionibus, etc.  
 — 6, 26 De impuberum et de aliis substitution.  
 — 6, 27 De necessariis et . . . inst. vel substitution.  
 — 6, 28 De liberis praeteritis vel exhereditatis.  
 — 6, 33 De edicto divi Hadriani tollendo et quemadm. scriptus heres in possession. mitt.  
 — 6, 34 Si quis alium testari prohibuerit, etc.  
 — 6, 36 De codicillis.  
 — 6, 37 De legatis.  
 — 6, 38 De verborum et rerum significatione.  
 — 6, 39 Si omissa sit causa testamenti.  
 — 6, 40 De indicta viduitate et de lege Julia miscella tollendo.  
 — 6, 41 De his quae poenae nomine in testamentis vel codicillis relinq.  
 — 6, 42 De fideicommissis. — 6, 43 Communia de legatis et fideicommissis, etc.  
 — 6, 44 De falsa causa adjecta legato vel fideicommisso.  
 — 6, 45 De his quae sub modo legata vel fideicommissa reliq.  
 — 6, 47 De usuris et fructibus legatorum vel fideicom.  
 — 6, 48 De incertis personis.  
 — 6, 49 Ad SC. Trebellianum.  
 — 6, 50 Ad legem Falcidiam.  
 — 6, 51 De caducis tollendis.  
 — 6, 52 De his qui ante apertas tabulas hereditates transmit.  
 — 6, 53 Quando dies legati vel fideicom. cedit.  
 — 6, 54 Ut in possession. legatorum et fideicom. servand. causa, etc.  
 — 8, 3 Quod legatum.  
 — 8, 7 De tabulis exhibendis.  
 — 9, 23 De his qui sibi abscribunt in testamento.  
 — 9, 32 De crimine expilatae hereditatis.  
 Nov. 1 De heredibus et Falcidia.  
 — 18 De triente et semisse et succession. filiorum et nepotum naturalium, etc.  
 — 66 Ut factae novae constitutiones . . . valeant. Parcit . . . subtilitatem constitution. super testamentis in reliq. quadrante, etc.

- 92 De immensis donation. in filios.
- 107 De testamentis imperfectis a parentibus in filios factis, etc.
- 108 De restitutionibus.
- 159 De restitutione fideicommissi, etc.

(c) **Post-Justinian:**

THEOPHILUS, ii, 7, 9-25. The titles of these are the same as supra (b), INST. ii, 7, 9-25.

ECLOGA, 5 De personis testari prohibitis et de testamentis per scripturam vel per nuncupationem faciendis.

PROCHIRON, 21 De testamento hominum sui juris.

— 22 De testamento hominum alieni juris.

— 23 De testamento libertorum.

— 24 De testamento episcoporum et monachorum.

— 25 De infirmatione testamenti.

— 29 De codicillis.

— 30 De heredibus.

— 32 De Falcidia.

— 33 De exheredibus.

— 35 De legatis.

EPANAGOGA, 29 De testamento et codicillo.

— 30 De his quibus non est permissum facere testamentum.

— 31 De testamento hominum alieni juris. (§ 1001)

— 32 De infirmatione testamenti.

— 34 De Falcidia et exheredibus.

— 36 De legato.

BAS. 35, 1 De testamento et codicillis, et quinam . . . facere possunt, et quemadmodum testamentum fiant.

— 35, 2 De testamento et quemadmodum testamentum ordinentur.

— 35, 3 Qui testamentum facere possint, etc.

— 35, 4 Si quis aliquem testari prohibuerit, etc.

— 35, 5 De tabulis exhibendis, etc.

— 35, 6 Testamentum quemadmodum aperiantur, etc.

— 35, 7 De his, quae in testamento cancellata . . . vel inducta, vel deleta, vel adscripta.

— 35, 8 De liberis et postumis heredibus institutis vel exhereditis, vel . . . praeteritis, etc.

— 35, 9 De heredum institutione et substitutione.

— 35, 10 De substitutione hominum, etc.

— 35, 11 De SC. Trebelliano, etc.

— 35, 13 De jure institutionis, . . . et de substitutis, etc.

- (§ 1001) — 35, 14 De acq. et omit., et adeunda et exquirenda hereditate . . . et de bonorum possessione.
- 35, 15 Si quis omitta causa testamenti ab intestato . . . hered. possideat.
- 35, 16 De dominis, qui insidiis . . . necati, etc.
- 35, 17 De bonorum possessione secundum tabulas.
- 35, 18 Ut deliberandi jus . . . transmit.
- 35, 19 De edicto divi Hadriani tollendo, et quomodo heres scriptus in possession. mittatur.
- 35, 20 De divisionibus, et de voluntatibus, inter liberos, etc.
- 35, 21 De testamento militis.
- 36, 1 De codicillis.
- 39, 1 De querela testamenti.
- 39, 2 De injusto et rupto et irritato testamento.
- 40, 3 De bonorum possessione contra tabulas.
- 40, 7 Quando non . . . partes accrescant, et de bon. poss. secundum tabulas et de bonorum poss. libertorum.
- 41, 1 De Falcidia.
- 41, 2 Si quis plus, quam per legem Falcidiam lic., legatum sit.
- 41, 3 SC. . . . Trebellianum, et de eis qui . . . et Falcidiam retinere debent.
- 41, 4 De heredibus et Falcidia.
- 41, 5 De immensis donation. in liberis, etc.
- 41, 6 De jure jurando, quod defunctus de modo substantiae, etc.
- 42, 2 Si pars hered. petatur . . . et fideicom. hered. petitione.
- 44, 1 De legatis et fideicommissis.
- 44, 2 De legatis et fideicommissis.
- 44, 3 De legatis et fideicommissis.
- 44, 4 De annuis legatis et fideicom.
- 44, 8 De optione vel electione legata.
- 44, 9 De tritico vino oleo legata.
- 44, 10 De instructo vel instrumento legato.
- 44, 11 De peculio legato.
- 44, 12 De penu legata.
- 44, 13 De supellectile legata.
- 44, 14 De alimentis legatis.
- 44, 15 De auro argento . . . vel statu legatis.
- 44, 17 De ademptione vel translatione legatorum vel fideicom.



- 44, 18 De rebus dubiis legatis, et de incertis personis.
  - 44, 19 De conditione et demonstratione . . . Quae in testamentis de legatis, etc.
  - 44, 20 De eo, quibus diebus legatum vel fideicommissum cesset.
  - 44, 21 Cuinam legatorum et fideicom. servand. gratia heres caveat.
  - 44, 22 De eo, ut in possession. legatorum vel fideicom. . . . liceat.
  - 44, 23 De legatis praestandis contra tabulas bonorum possessione petita.
  - 44, 24 Interdictum adv. legatarios.
  - 44, 25 De possessione et usucapione legatorum, etc.
  - 44, 26 Si omissa sit causa testamenti.
  - 44, 27 Communia de legatis et fideicommissis, etc.
  - 44, 28 De legatis vel fideicommissis sub modo relictis.
  - 44, 29 Quod non dictatur liberis orbatus qui nepotem, etc.
  - 44, 30 De adscendentibus et descendentibus, quomodo ad eos legata transmit.
  - 44, 31 Tunc possessio legatorum vel fideicom. servand. causa permissa, etc.
  - 48, 13 De fideicom. li- (§1001) bertantibus, etc.
  - 60, 42 De iis, quibus ut indignis relictis legata vel hereditates, etc.
- HEXABIBLOS, 5, 1 De testamento hominum sui juris.
- 5, 2 De testamento hominum alieni juris.
  - 5, 3 De testamento liberorum.
  - 5, 4 De testamento episcoporum et monachorum.
  - 5, 5 De infirmatione testamenti.
  - 5, 6 De querela et opugnatione testamenti.
  - 5, 7 De codicillis.
  - 5, 9 De Falcidia.
  - 5, 10 De exheredatis.
  - 5, 11 (10) De legato.
  - Appendix, title 3 De significatione verborum.
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- CHILE, 951-1436.
- FRANCE, 893-1100.
- GERMANY, 2064-2385.
- ITALY, 759-1096.
- JAPAN, 1060-1146.
- LOUISIANA, 871, 1467-1733.
- MEXICO, 3227-3570, 3637.
- PHILIPPINES, 657-911. (See Willard, *Notes on Spanish Civil Code*, pp. 47-50, Manila, 1904.)
- PORTO RICO, 664-885.
- QUEBEC, 754-981.
- RUSSIA, 1010-1103.
- SPAIN, 657-911.
- SWITZERLAND, 457-640.
- III. See also *supra* §1000; vol. ii, §§ 678-715.

**Obligations (including formation, correality, transmissibility, performance, tender, release, rescission, loss of thing due, novation. submission to arbitration, set-off, confusion, joinder of issue, extinctive prescription); general principles of contracts (including parties, meeting of the minds, form, consideration): references.**

- I. **Texts of Roman law:—**
- For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.
- (a) **Ante-Justinian:**
- XII TABLES, vi, 1-2; viii, 19.
- GAIUS, i, 184, 192-5; ii, 12-19; iii, 88-9, 97-114, 163-81; iv, 61, 64-8, 110-14.
- PAULUS, *Sent.* 1, 1 *De pactis et conventis*.
- 1, 7 *De integri restitutione*.
- 2, 1 *De rebus creditis et jure jurando*.
- 5, 7 *De obligationibus*.
- 5, 8 *De novationibus*.
- COD. GREGORIAN. 1, 10 *De pactis*.
- 1, 11 *De transactionibus*.

- (§ 1002) — 2 De his quae vi metusve causa.  
 — 3 Si major fuerit probatus.  
 — 4 Si amissis vel debitori redditis instrumentis creditum petatur.  
 — 4 Si debito persoluto instrument., etc.  
 — 12 De duobus reis stipulandi et promittendi.  
 COD. HERMOGENIAN. De pactis et transactionibus.  
 — Ex delictis defunctorum, etc.  
 COD. THEOD. 2, 9 De pactis et transactionibus.  
 — 4, 5 De litigiosis.  
 — 11, 28 De indulgentiis debitorum.
- (b) **Justinian:**  
 INST. 1, 21 De auctoritate tutor. (as far as § 3).  
 — 2, 2 De rebus incorporalibus.  
 — 3, 13 De obligationibus.  
 — 3, 15 De verb. obligation., 7.  
 — 3, 16 De duobus reis stipulandi et promittendi.  
 — 3, 19 De inutilibus stipulation.  
 — 3, 24 De locatione et conduct., 6.  
 — 3, 28 Per quas personas acquir.  
 — 3, 29 Quibus modis obligatio tollitur (as far as § 5).  
 — 4, 6 De actionibus, 30 and 39.  
 — 4, 12 De perpetuis et temporal. action et quae ad heredes vel in heredes transeunt.  
 DIG. 2, 14 De pactis.  
 — 2, 15 De transactionibus.  
 — 4, 8 De receptis.  
 — 12, 4 De condictione causa data non secuta.  
 — 12, 5 De condictione ob turpem vel injustam causam.  
 — 12, 6 De condictione indebiti.  
 — 12, 7 De condictione sine causa.  
 — 13, 4 De eo quod certo loco dari oportet.  
 — 16, 2 De compensationibus.  
 — 18, 2 De in diem additione.  
 — 18, 3 De lege commissoria.  
 — 18, 5 De rescind. venditione.  
 — 19, 5 De praescriptis verbis et in factum action.  
 — 22, 1 De usuris et fructibus . . . et mora.  
 — 43, 25 De remissionibus.  
 — 44, 4 De doli mali et metus, etc.  
 — 44, 7 De obligationibus, etc.  
 — 45, 2 De duobus constituendis.

- 46, 2 De novation. et delegation.
- 46, 3 De solutionibus et liberation.
- 46, 4 De acceptilationibus.
- 46, 7 Judicatum solvi.
- 46, 8 Ratam rem habere et de ratihabitione.
- 50, 16 De verborum significatione.
- CODE, 2, 3 De pactis.
- 2, 4 De transactionibus.
- 2, 5 De calculi errore.
- 2, 13 Ne liceat . . . actiones transferre.
- 2, 19 (20) De his quae vi metusve causa, etc.
- 2, 20 (21) De dolo malo.
- 2, 31 (32) Si adv. transactionem minor restitui velit.
- 2, 32 (33) Si adv. solutionem, etc.
- 2, 45 (46) Si major factus ratum habuerit.
- 2, 55 (56) De receptis.
- 2, 56 (57) De satisdando.
- 3, 9 De litis contestatione.
- 3, 18 . . . qui certo loco dare promisit.
- 3, 42 Ad exhibendum.
- 4, 6 De condictione ob causam datorum.
- 4, 7 De condictione ob turpem causam.
- 4, 9 De condictione ex lege et sine . . . vel in- (§1002) justa causa.
- 4, 10 De obligationibus, etc.
- 4, 11 Ut actiones et ab herede et contra heredem incipiant.
- 4, 15 Quando fiscus vel privat. debitor sin debitores exigere potest.
- 4, 17 Ex delictis defunctorum in quantum heredes conveniantur.
- 4, 22 Plus valere quod agitur, etc.
- 4, 27 Per quas personas adquir.
- 4, 31 De compensationibus.
- 4, 44 De rescind. venditione.
- 6, 38 De verb. et rerum significatione.
- 7, 26 De . . . transactione.
- 7, 40 De annali exceptione Italici contractus tollenda et de diversis temporibus . . . et praescriptionibus, etc.
- 7, 71 De bonis cedere possunt.
- 8, 38 (39) De inutilibus stipulation.
- 8, 39 (40) De duobus reis stipulandi et . . . promittendi.
- 8, 41 (42) De novation. et delegation.

- (§ 1002) — 8, 42 (43) De solutionibus et liberation.  
 — 8, 43 (44) De acceptationibus.  
 — 11, 40 (39) De solutionibus et liberation., etc.  
 — 11, 57 (56) Ut nullus ex vicinis pro alienis debitis vicinorum teneatur.  
 Nov. 4 De . . . solutionibus.  
 — 73 De instrumentorum . . . scriptis . . . et de ex non scripto contractibus, etc.  
 — 99 De reis promittendis.
- (c) **Post-Justinian:**
- THEOPHILUS, i, 21, to § 1; ii, 2; iii, titles 13, 15 16, 19, 24 § 6, 28, 29, to § 5; iv, title 6, §§ 30 and 39, title 12 (for full titles of these, see supra "b", INST.).
- ECLOGA, 15 De transactionibus validis aut rescissis.
- PROCHIRON, 37 De tempore quo creditores adv. heredes, etc.
- EPANAGOGA, 27 De transactione.  
 — 35, De temporibus quibus creditores adv. heredes defuncti, etc.
- BAS. 2, 2 De verborum significatione.  
 — 7, 2 De sententia arbitrorum et judicium compromissariorum.
- 10, 14 Si adv. transactionem vel divisionem minor restitui velit.  
 — 10, 15 Si adv. solutionem a debitore, etc.  
 — 10, 20 Si adv. creditorem.  
 — 10, 28 Si major factus ratum habuerit.  
 — 11, 1 De pactis vel conventionibus.  
 — 11, 2 De transactione.  
 — 19, 18 De monopolis et de conventu . . . illicito, etc.  
 — 24, 1 De conditione causa data, causa non data.  
 — 24, 2 De conditione ob turpem vel injustam causam.  
 — 24, 3 De conditione ex lege, ex sine causa vel injusta causa, et de obligationibus, etc.  
 — 24, 4 Ne uxor pro marito, vel maritus pro uxore, vel mater pro filio, vel filius pro patre, vel pater pro filio emancipato, vel libertus pro patrono teneantur.  
 — 24, 6 De eo, qui indebitum solvit, et solutum repetit.  
 — 24, 8 De eo, quod solutum et sine causa, etc.  
 — 24, 9 De eo, quod certo loco dari oportet.  
 — 24, 10 De compensatione.

— 26, 3 De . . . duobus reis promittendis et de his qui solverunt.

— 26, 4 De novatione sivi translatione debiti, etc.

— 26, 5 De solutionibus et liberation.

— 26, 6 De liberation. sive acceptilatione, etc.

— 43, 2 De duobus reis constituendis.

— 43, 6 De contractu interposita stipulatione.

— 44, 16 De liberatione legata, et de falsa causa solutionis, etc.

— 50, 15 De annali exceptione Italici contractus tollenda et de diversis temporibus . . . et praescriptionibus, etc.

— 51, 6 Quorum rerum actio non datur.

— 52, 1 De obligationibus, etc.

— 54, 13 De pollicitationibus.

— 54, 36 De solutionibus et liberation., etc.

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— 1, 9 De pactis.

— 1, 10 De transactione.

— 1, 11 De necessitate et vi.

— 1, 15 De obscuro et ambiguo.

— 1, 16 De militibus. (§ 1002)

— 5, 13 Quo tempore creditores adv. defuncti heredes agere possunt.

— (appendix, title 3), De significatione verborum.

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- System, vol. iii, §§ 105, 113–40, and appendix viii; vol. v, §§ 231–5; vol. vii, §§ 310–14, 330–33; vol. viii, §§ 369–74, 381–8, 392, 397.
- SCHUSTER, German civil law, §§ 138–307.
- SOHM (Ledlie<sup>3</sup>), Roman law, pp. 358–447.
- TROLLEY, *La lésion en droit romain et en droit français*, Paris, 1871.
- VAN WETTER, *Les obligations en droit romain*, Ghent, 1886.
- WALTON, Roman law<sup>2</sup>, pp. 190–204.
- WILLISTON, Dependency of mutual promises in the Civil Law, 13 *Harvard Law Rev.*, pp. 80–109.
- (b) **Modern Codes:** —
- References are to the Civil Code, unless otherwise stated.
- ARGENTINA, 529–2321.
- AUSTRIA, 859–1502.
- CHILE, 1437–2524.
- FRANCE, 1101–2281.
- GERMANY, 241–853.
- ITALY, 1097–2147.
- JAPAN, 399–724.
- LOUISIANA, 1756–3555.
- MEXICO, 1272–3226.
- PHILIPPINES (same as Spain).
- PORTO RICO, 1055–1875.
- QUEBEC, 982–2612.
- RUSSIA, 1374–2334.
- SPAIN, 1088–1975.
- SWITZERLAND, Code of Obligations.
- III. See also *supra* vol. ii, §§ 645–6 (prescription), 716–17 (bankruptcy), 724–51 (obligations and contracts), 857, 872 (civil procedure); *supra* vol. iii, § 998; *infra* §§ 1016, 1018.

§ 1003 **Contracts of loan (nexum, mutuum, maritime loan, and commodatum): references.**

- I. **Texts of Roman law:** — — 2, 10 De SC. Macedoniano.
- For English translations, see — 2, 14 De usuris.
- supra* §§ 945, 946, 948, 951, 952, 955. COD. GREGORIAN. Ad SC. Macedonianum.
- (a) **Ante-Justinian:** COD. THEOD. 2, 33 De usuris.
- XII TABLES, viii, 18. — 4, 18 De fructibus, etc.
- GAIUS, iii, 91; iv, 116. — 4, 19 De usuris rei judicatae.
- PAULUS, Sent. 2, 4 De commodato, etc.

— 9, 11 De privati carceris custodia.

(b) **Justinian:**

INST. 3, 14 Quibus modis . . . obligatio., §§ 1-12.

— 4, 7 Quod cum eo qui in aliena potestate est negotium etc.

DIG. 12, 1 De rebus creditis, etc.

— 13, 6 Commodati vel contra.

— 22, 2 De nautico faenore.

— 43, 32 De migrando.

— 44, 7 De obligationibus, etc.

CODE, 2, 37 (38) Si adv. creditorem.

— 4, 23 De commodato.

— 4, 28 Ad SC. Macedonianum.

— 4, 30 De non numerata pecunia.

— 4, 32 De usuris.

— 4, 33 De nautico fenore.

— 5, 56 De usuris pupil.

— 6, 47 De usuris, etc.

— 7, 54 De usuris rei iudicatae.

— 9, 5 De privatis carceribus inhibendis.

— 10, 6 De his qui ex publicis rationibus mutuam pecuniam acceperunt.

— 10, 8 De fiscal. usuris.

Nov. 32 Ne quis mutuum . . . et quantam usuram, ab agricolis, etc.

— 33 Ut nullus mutuans. (§1003) agricolae, etc.

— 34 Nullum credentem agricolae . . . et quantam . . . usuram, etc.

— 73 De instrumentis . . . et . . . mutuo, etc.

— 106 De usuris nauticis.

— 110 De usuris nauticis.

— 121 Ut quae . . . fiunt usurarum, etc.

— 138 De usuris, etc.

(c) **Post-Justinian:**

THEOPHILUS iii, 14, §§ 1-2; iv, 7 (same titles as those of supra "b" INST.).

ECLOGA, 10 De mutuo, etc.

PROCHIRON, De mutuo, etc.

EPANAGOGA, De mutuo, etc.

BAS. 10, 5 De filiusfam. minor.

— 10, 6 De fidejussor. minorum.

— 13, 1 Commodati vel contra.

— 18, 4 De SC. Macedoniano, etc.

— 23, 1 De rebus creditis, etc.

— 23, 3 De usuris, etc.

— 38, 17 De usuris pupil.

— 52, 1 De obligationibus, etc.

— 53, 5 De creditis naval.

— 60, 55 Ut ne sint privati carceres.

HEXABIBLOS, 2, 2 De non numerata pecunia.

- 2, 10 De commodato, etc.
- 3, 5 De mutuo, etc.
- 3, 7 De usura.

## II. Modern references:—

### (a) In general:

- BELLOT and WILLIS, *Law of unconscionable bargains*, London, 1897.
- COGGS *v.* BERNARD, Lord Raymond's Rep. 909.
- FOSTER, *Der Kreditauftrag . . . nach röm. u. neuem bürgerl. Rechte* (1903).
- PACCHIONI, *Nexum — impressioni e reminiscenze* (*Mélanges P. F. Girard*, vol. ii, p. 319, Paris, 1912).
- VAINBERG, *Le nexum et la contrainte par corps en droit romain*, Paris, 1874.
- ZULUETA, *The recent controversy about nexum*, 29 *Law Quart. Rev.*, p. 137; 33 *Canadian Law Times*, p. 863.

### (b) Modern codes:

References are to the Civil Code, unless otherwise stated.

ARGENTINA, 2274–2321; code of Commerce, 558–71, 1110–54.

AUSTRIA, 971–1001.

CHILE, 2174–3310; code of Commerce, 795–806, 1168–1215.

FRANCE, 1874–1914; code of Commerce, 311–31.

GERMANY, 598–610; code of Commerce, 354.

ITALY, 1805–34; code of Commerce, 590–603.

JAPAN, 587–600.

LOUISIANA, 2891–2925.

MEXICO, 2661–2700; code of Commerce, 357–70, 794–811.

PHILIPPINES (same as Spain).

PORTO RICO, 1642–59.

QUEBEC, 1762–86.

RUSSIA, 2012–99.

SPAIN, 1740–57; code of Commerce 311–25, 719–36.

SWITZERLAND, code of Obligations, 305–18.

## III. See also supra § 1002; vol. ii, §§ 754–7.

## § 1004 Depositum: references.

### I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

### (a) Ante-Justinian:

XII Tables, viii, 19.

PAULUS, *Sent.* 2, 4 *De . . . et deposito*.

— 2, 12 De deposito.  
 COD. GREGORIAN. 4 De de-  
 posito.

COD. THEOD. 2, 28 De pecuniae  
 sequestratione prohibita.

COLL. MOSAIC. ET ROM. 10  
 De deposito.

(b) **Justinian:**

INST. 3, 14 Quibus modis . . .  
 obligatio, § 3.

DIG. 43, 32 De migrando.

— 44, 7 De obligationibus,  
 etc.

CODE, 4, 4 De prohibita  
 sequestratione pecuniae.

— 4, 34 Depositi.

NOV. 73, De instrumen-  
 torum . . . et . . . de de-  
 posito, etc.

— 88 De deposito, etc.

(c) **Post-Justinian:**

THEOPHILUS, 3, 14 Quib.  
 modis . . . obligatio, § 3

ECLOGA, 11 De deposito.

PROCHIRON, 18 De deposito.

EPANAGOGA, 25 De deposito.

BAS. 13, 2 De deposito.

HEXABIBLOS, 3, 9 De deposito.

II. **Modern references:—**

(a) **In general:**

COGGS *v.* BERNARD, Lord  
 Raymond's Rep. 909.

SAVIGNY, Das Recht des (§1004)  
 Besitzes<sup>7</sup>, § 25.

(b) **Modern Codes:**

References are to the Civil  
 Code, unless otherwise  
 stated.

ARGENTINA, 2216-73; code of  
 Commerce, 562-79.

AUSTRIA, 957-70.

CHILE, 2211-57; code of  
 Commerce, 807-12.

FRANCE, 1915-63.

GERMANY, 688-700; code of  
 Commerce, 415-23.

ITALY, 1835-77; code of  
 Commerce, 461-79.

JAPAN, 657-66; code of Com-  
 merce, 353-83.

LOUISIANA, 2926-83.

MEXICO, 2545-93; code of  
 Commerce, 332-57.

PHILIPPINES (same as Spain).

PORTO RICO, 1660-91.

QUEBEC, 1794-1829.

RUSSIA, 2100-25.

SPAIN, 1758-89; code of Com-  
 merce, 303-10.

SWITZERLAND, code of Obliga-  
 tions, 253-304.

III. See also *supra* § 1002;  
 vol. ii, § 758.

§ 1005 **Pledge (pignus, vadium): references.** The subject of pledge is covered bibliographically under supra § 996 (personal, praedial, and praetorian servitudes, C, 2: Fiducia, pignus, hypotheca, etc.). To the list of modern references should be added:

DENIS, Treatise on the law of the contract of pledge as governed both by the Common Law and the Civil Law (1898).

PAPPULIAS, Das Pfandrecht nach dem griechisch. u. röm. Rechts. (1909).

SEE also, vol. ii, § 759.

§ 1006 **Exchange: references.**

**I. Texts of Roman law:—**

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

**(a) Ante-Justinian:**

GAIUS, 3, 141.

**(b) Justinian:**

INST. 3, 23 De emptione et venditione, § 2.

DIG. 12, 4 De conduct. causa data, etc., 16.

— 19, 3, De aestimatoria, 1, pr.

— 19, 4 De rerum permutatione.

— 19, 5 De praescriptis verbis, etc., 5, § 1.

CODE, 4, 64 De rerum permutatione,

NOV. 7 De non etc. . . . permutandis ecclesiasticis. rebus, etc.

**(c) Post-Justinian:**

THEOPHILUS, 3, 23 De emptione et venditione, § 2.

BAS. 20, 3 De permutatione.

**II. Modern references:—**

**(a) Modern Codes:**

References are to the Civil Code, unless otherwise stated.

ARGENTINA, 1519–26.

AUSTRIA, 1045–62.

CHILE, 1897–1900; code of Commerce, 161.

FRANCE, 1702–7.

GERMANY, 515.

ITALY, 1549–55.

JAPAN, 586.

LOUISIANA, 2660–67.

MEXICO, 2930–35.

PHILIPPINES (same as Spain).

PORTO RICO, 1441–4.

QUEBEC, 1596–9.

RUSSIA, 1374–80.

SPAIN, 1538–41.

SWITZERLAND, code of Obligations, 237–8.

**III. See also supra § 1002; vol. ii, § 761.**

**Stipulation (stipulatio): references.**

§ 1007

**I. Texts of Roman law:—**

For English translations, see  
supra §§ 945, 948, 951, 952,  
955.

**(a) Ante-Justinian:**

GAIUS, iii, 92–114.

PAULUS, Sent. 2, 3 De con-  
tractibus.

— 5, 7 De obligationibus.

— 5, 9 De stipulationibus.

COD. GREGORIAN. 12 De duo-  
bus reis stipulandi, etc.

VATICAN FRAG. 317–41, De  
cognitoribus, etc.

**(b) Justinian:**

INST. 3, 15 De verborum ob-  
ligatione.

— 3, 16 De duobus reis  
stipulandi, etc.

— 3, 17 De stipulatione  
servorum.

— 3, 18 De divisione stipu-  
lationum.

— 3, 19 De inutil. stipula-  
tion.

DIG. 44, 7 De obligationibus,  
etc.

— 45, 1 De verborum obli-  
gation.

— 45, 2 De duobus consti-  
tuendis.

— 45, 3 De stipulatione  
servorum.

— 46, 4 De acceptatione.

— 46, 5 De stipulation.  
praetoriis.

— 46, 6 Rem pupilli . . .  
salvam fore.

— 46, 7 Judicatum solvi.

— 46, 8 Ratam rem haberi,  
etc.

— 50, 16 De verborum  
signif., 7.

CODE, 8, 37 (38) De contra-  
henda stipulation.

— 8, 38 (39) De inutil. stip-  
ulation.

— 8, 39 (40) De duobus  
stipulandi, etc.

— 8, 43 (44) De acceptila-  
tionibus.

NOV. 99 De reis promittend.

**(c) Post-Justinian:**

THEOPHILUS, iii, 15–19 (same  
titles as supra “b”, INST.).

BAS. 26, 6 De . . . acceptila-  
tione, etc.

— 43, 1 De verborum obli-  
gation.

— 43, 2 De duobus reis  
constituendis.

— 43, 3 De stipulation.  
servorum.

— 43, 4 De praetoriis stipu-  
lation.

— 43, 5 De litigiosis.

— 43, 6 De contractu inter-  
posita stipulatione.

— 52, 1 De obligationibus,  
etc.

**II. Modern references:**

COLLINET, *Le rôle primitif de la stipulation* (Mélanges Gérardin, p. 75, Paris, 1907).  
HAZELTINE, *The formal con-*

*tract of early English law*, 10 *Columbia Law Rev.*, p. 608.

**III. See also supra § 1002;**  
vol. ii, § 767.

• § 1008 **Suretyship: references:**

**I. Texts of Roman law:—**

For English translations, see  
supra §§ 945, 946, 948, 951,  
952, 955.

**(a) Ante-Justinian:**

GAIUS, 3, 115–27.

PAULUS, *Sent.* 1, 20 De fidejussore, etc.

— 2, 2 De pecunia constituta.

— 2, 11 Ad SC. Velleianum.

— 5, 10 De contrahenda auctoritate.

COD. GREGORIAN. 4 Si debito persoluto, etc.

— 12, De sponsor. et fidejussor.

COD. HERMOGENIAN. De cautā . . . pecunia.

COD. THEOD. 2, 13 De actionibus ad potentes, etc.

— 3, 15 De fidejussor. dotium.

— 10, 5 Qui . . . fidejussores, etc.

— 12, 11 De curator. kalendarii et fidejussor. eorum.

NOV. VALENTINIAN. 12 De . . . fidejussor., etc.

**(b) Justinian:**

INST. 3, 20 De fidejussor.

— 4, 6 De action., §§ 8–9.

DIG. 13, 5 De pecunia constituta.

— 16, 1 Ad SC. Velleianum.

— 27, 7 De fidejussor., etc.

— 46, 1 De fidejussor. et mandator.

— 50, 16 De verb. signif. 7.

CODE, 2, 23 (24) De fidejussor., etc.

— 4, 18 De constituta pecunia.

— 4, 29 Ad SC. Velleianum.

— 8, 40 (41) De fidejussor. et mandator.

NOV. 4 De fidejussor. et mandator., etc.

— 99 De reis promittendi.

**(c) Post-Justinian:**

THEOPHILUS, 3, 20 De fidejussor.

— 4, 6 De action. §§ 8–9.

BAS. 9, 10 Cautio judicati, etc.

— 9, 11 De satisfatione ratam rem haberi.

— 10, 6 De fidejussor., etc.



— 26, 1 De fidejussor. et mandator.

— 26, 2 Ut creditores . . . mandatores vel pecuniae constitutae reos, vel fidejussores.

— 26, 3 De constituta pecunia, etc.

— 26, 7 De constituta pecunia et SC. Velleiano.

HEXABIBLOS, 1, 13 De mulieribus.

— 3, 6 De fidejussor. et pecuniae constitutae reis.

## II. Modern references:—

### (a) In general:

APPLETON, *Nouvelles observations sur la loi Furia de sponsu* (in *Mélanges Gérardin*, p. 1, Paris, 1907).

LEVY, *Sponsio, fidepromissio, fidejussio*, Berlin, 1907.

TOURTOULON, *Le Velléien chez les Glossateurs* (in *Études de l'hist. jurid. off. à P. F. Girard*, vol. i, p. 417, Paris, 1913).

ZOCCO-ROSA, *Origin of sponsio*, 18 *Law Quart. Rev.*, p. 346.

### (b) Modern Codes:

References are to the Civil Code, unless otherwise stated.

ARGENTINA, 2020–84; code of Commerce, 478–83.

AUSTRIA, 1346–74.

CHILE, 2335–83; code of Commerce, 820–21.

FRANCE, 2011–43.

GERMANY, 765–78.

ITALY, 1898–1931.

JAPAN, 446–65.

LOUISIANA, 3035–70.

MEXICO, 1700–72.

PHILIPPINES, same as Spain.

PORTO RICO, 1723–57.

QUEBEC, 1185–6, 1199, 1929–65.

RUSSIA, 1555–72.

SPAIN, 1822–56; code of Commerce, 439–42.

SWITZERLAND, code of Obligations, 492–512.

III. See also *supra* §§ 1002, 1007, and *infra* 1009 (*cautio*); *supra* vol. ii, §§ 768–72.

**Literal contracts** (*expensilatio*, *chirographum*, *sygrapha*, § 1009 *cautio*): references.

## I. Texts of Roman law: —

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

### (a) Ante-Justinian:

GAIUS, 3, 128–34.

COD. HERMOGENIAN. De *cauta et non numerata pecunia*.

COD. THEOD. 2, 4 De denuntiatione, etc., 6.

— 2, 27 Si certum petatur de chirografis.

(b) **Justinian:**

INST. 3, 21 De litterarum obligatio.

— 4, 13 De exception., § 2.

DIG. 44, 7 De obligation., etc.

NOV. 100 De tempore non solutae pecuniae, etc.

(c) **Post-Justinian:**

THEOPHILUS, 3 21 De litterarum obligatio.

— 4, 13 De exception., § 2.

BAS. 9, 10 Cautio judicati, etc.

**II. Modern references:—**

CAUTIO judicatum solvi in

French law, 135 *Law Times*, p. 96.

DUQUESNE, Contribution à l'étude de la cautio judicatum solvi (in *Mélanges Gérardin*, p. 197, Paris, 1907).

KRUEGER, Die Cautio Muciana (in *Mélanges P. F. Girard*, vol. ii, p. 1, Paris, 1912).

LABORDERIE, Quelques notes sur la cautio dans la pratique romain au temps classiques, 33 *Rev. gén. du droit*, p. 439.

**III. See also supra §§ 1002, 1008; vol. ii, §§ 776–8.**

§ 1010 **Sale: references.**

**I. Texts of Roman law:—**

For English translations, see supra §§ 945, 947, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, xii, 1.

GAIUS, iii, 135–7, 139–47.

PAULUS, Sent. 2, 17 Ex empto et vendito.

COD. GREGORIAN. 3 Si sub alterius nomine res emptā erit.

COD. THEOD. 3, 1 De contrahenda emptione.

— 3, 4 De aediliciis actionibus.

NOV. THEOD. 19 De rescind. vendition., etc.

NOV. VALENTINIAN. 5 De pantapolis ad urbem Romanam, etc.

— 32 De confirm. his quae administrantibus . . . distracta, etc.

VATICAN FRAG. 1–40 Ex empto et vendito.

(b) **Justinian:**

INST. 2, 1 De rerum divisione, §§ 40–46.

— 3, 22 De consensu obligatione.

- 3, 23 De emptione et venditione.
- DIG. 18, 1 De contrahenda emptione et de pactis.
- 18, 4 De hereditate vel actione vendita.
- 18, 5 De rescind. venditione.
- 18, 6 De periculo et commodo rei venditae.
- 19, 1 De actionibus empti venditi.
- 21, 1 De aedilicio edicto et redhibitione et quanti minoris.
- 21, 2 De eviction., etc.
- 21, 3 De exceptione rei venditae et traditae.
- 41, 4 Pro emptore.
- 42, 5 De rebus auctoritate iudicis . . . vendundis.
- 42, 8 Quae in fraudem creditorum facta, etc.
- 44, 6 De litigiosis.
- CODE, 2, 27 (28) Si adversus venditionem.
- 2, 54 (55) Se alienation. iudicii mutandi causa facta.
- 4, 36 Si servus se emi mandaverit.
- 4, 38 De contrahenda emptione.
- 4, 39 De hereditate vel actione vendita.
- 4, 40 Quae res venire non possunt et qui vendere vel emere vetantur.
- 4, 41 Quae res exportari (§ 1010) non debeant.
- 4, 44 De rescind. venditione.
- 4, 45 Quando liceat ab emptione discedere.
- 4, 46 Si propter publicas pensationes venditio fuerit celebrata.
- 4, 47 Sine censu vel reliquis fundum comparari non posse.
- 4, 48 De periculo et commodo rei venditae.
- 4, 49 De actionibus empti et venditi.
- 4, 50 Si quis . . . sub alterius nomine . . . emerit.
- 4, 51 De rebus alienis non alienandis et de prohibita rer. alienatione, etc.
- 4, 52 De communium rerum alienatione.
- 4, 53 Rem alienam gerentibus, etc.
- 4, 54 De pactis inter emptor. et venditor.
- 4, 55 Si servus exportandus veneat.
- 4, 56 Si mancipium ita venerit, ne prostituatur.
- 4, 57 Si mancipium ita fuerit alienatum, ut manumittatur vel contra.
- 4, 58 De aediliciis actionibus.
- 4, 60 De nundinis.

- (§1010) — 4, 63 De commerciis et mercatoribus.
- 7, 72 De bonis auctoritate judicis . . . venumdandis, etc.
- 7, 75 De revocandis his quae per fraudem alienata sunt.
- 8, 44 (45) De eviction.
- Nov. 7 De non alienandis . . . ecclesiasticis rebus, etc.
- 40 Ut ecclesia . . . possit alienare habitacula, etc.
- 46 De ecclesiastic. immobil. rerum alienatione, etc.
- 65 Alienatione ecclesiae Mysiae relictarum pro captivorum redemptione, etc.
- 85 De armis.
- 120 De alienatione . . . in universis locis rerum sacrarum.
- CONST. DISPERSAE (in Appendix II to Nov.) 5 De metaxa.
- (c) **Post-Justinian:**
- THEOPHILUS, 2, 1 De rer. divisione, §§ 40-46.
- 3, 22 De obligationibus ex consensu.
- 3, 23 De emtione et venditione.
- ECLOGA, 9 De venditione et emtione, etc.
- PROCHIRON, 14 De venditione et emptione.
- EPANAGOGA, 23 De venditione et emptione.
- BAS. 5, 2 De alienatione . . . rer. ecclesiastic.
- 9, 6 Quibus ex causis in possession., etc.
- 9, 7 De rebus auctoritate judicum . . . venumdandis.
- 10, 10 Si adv. venditionem.
- 19, 1 De contractu emtionis et venditionis, etc.
- 19, 2 Quando in emptione et venditione, etc.
- 19, 3 . . . cum . . . venditum sit, ut intra certum tempus pretium solveretur.
- 19, 4 De hereditate vel actione vendita.
- 19, 5 De rescind. emtione et venditione, etc.
- 19, 6 De periculo et commodo rei venditae.
- 19, 7 De servis exportandis, vel si ita mancipium venierit, ut manumittatur, etc.
- 19, 8 De actione emti et venditi, etc.
- 19, 9 De re, quae aestimata ad vendendum, etc.
- 19, 10 De edicto aedilicio, et de re redhibenda, et de rescind. venditione et minori pretio dato.
- 19, 11 De eviction. rei venditae, etc.

— 19, 12 De exceptione rei venditae et traditae.

— 19, 13 Si publicae administrationis nomine venditio celebrata fuerit.

— 19, 14 De fundo sine publicis tributis vel reliquis non comparando, etc.

— 19, 15 Si quis alteri, vel sub alterius nomine, vel aliena pecunia emerit.

— 19, 16 Rem alienam gerenti, etc.

— 19, 17 De ancilla ita vendita, ne prostituatur.

— 19, 19 De eviction., etc.

— 50, 4 Pro emtore.

— 53, 7 De emtione et venditioni vini.

— 54, 30 De vendendis rebus civitatis.

— 55, 5 Ne liceat habitatoribus metrocomiarum, etc.

— 55, 14 De cupressis ex luco Daphnensi vel Perseis per Aegyptum non . . . vendendis, etc.

— 56, 6 De fide et jure fisci, etc.

— 57, 9 De armis, etc.

— 60, 9 Si mensor falsum modum dixerit.

HEXABIBLOS, 3, 3 De emtione venditione, etc.

## II. Modern references:—

### (a) In general:

ACTIO REDHIBITORIA (modern cases and notes),

28 South African Law Journal, p. 142.

BENJAMIN, Sales of personal property (with reference to the English and American decisions, French Civil Code and Roman law), 6th American edition by Bennett (especially book i, part i, ch. iii, §§ 62; book ii, ch. vii, §§ 400–413), New York, 1892.

BONNET, Le vendeur obligé de donner (in *Mélanges Gérardin*, p. 43, Paris, 1907).

BOULARD, La vente dans les actes coptes (in *Études d'hist. jurid. off. à P. F. Girard*, vol. ii, p. 1, Paris, 1913).

DICTA and promissa in the Civil Law and under the modern codes, 49 Canadian Law Journal, p. 687.

MACKINTOSH, The Roman law of sale with modern illustrations<sup>2</sup>, Edinburgh, 1907.

MEYNIAL, Note sur la loi "Emptorum," Code, loc. cond. 4, 65, 9 (in *Mélanges Gérardin*, p. 413, Paris, 1907).

— Des conditions requises au Moyen-Âge pour l'application de la rescission de la vente pour lésion d'outre moitié (*Mélanges P. F. Girard*, vol. ii, p. 201, Paris, 1912).

- MOYLE, *Contract of sale in Roman law*, Oxford, 1892.
- POTHIER (translated by Cushing), *Sale*, Boston, 1839.
- TROLLEY, *La lésion en droit romain et droit français*, Paris, 1871.
- VOET (translated by Berwick), *Commentary on the Pandects*, Book 13, title 7, books 18–21 (on purchase and sale, evictions, warranty), London, 1902.
- (translated by Wilson), *Contract of sale*, London, 1897.
- WILLISTON, *Sale in the Civil Law, the risk of loss after an executory contract of*, 9 *Harvard Law Rev.*, p. 72.
- ARGENTINA, 1357–1467, 2123–2215.
- AUSTRIA, 1053–89, 908–10, 922–33.
- CHILE, 1793–1896.
- FRANCE, 1582–1701; *code of Commerce*, 109.
- GERMANY, 433–515, 336–45; *code of Commerce*, 373–7.
- ITALY, 1447–1548; *code of Commerce*, 59–72.
- JAPAN, 555–85; *code of Commerce*, 286–90.
- LOUISIANA, 2438–2659.
- MEXICO, 2811–2929.
- PHILIPPINES (same as Spain).
- PORTO RICO, 1348–1440.
- QUEBEC, 1472–1595.
- RUSSIA, 1381–1527, 1679–90.
- SPAIN, 1445–1537.
- SWITZERLAND, *code of Obligations*, 184–236.

(b) **Modern Codes:**

References are to the Civil Code, unless otherwise stated.

III. See also *supra* § 1002; vol. ii, §§ 780–91.

§ 1011 **Letting and hiring: references.**

I. **Texts of Roman law:—**

For English translations see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

XII TABLES, xii, 1.

GAIUS, iii, 135–7, 142–7.

PAUL. Sent. 2, 18 *De locato et conducto*.

COD. THEOD. 5, 12 *De*

*fundis patrimonial. . . et eorum conductoribus.*

— 10, 3 *De locatione fundorum . . . et rei publicae et templorum.*

— 10, 5 *Qui conductores rei privatae.*

(b) **Justinian:**

INST. 3, 24 *De locatione et conductione.*

- DIG. 19, 2 Locati conducti.  
 — 21, 2 De eviction., etc.  
 — 43, 25 De remissionibus.  
 — 43, 26 De precario.  
 — 43, 32 De migrando.  
 CODE, 4 65 De locato et conducto.  
 — 8, 44 (45) De eviction.  
 — 11, 62 (61) De fundis patrimonial., etc.  
 — 11, 71 (70) De locatione praediorum civil. vel fiscal., etc.  
 — 11, 72 (71) De conductoribus . . . praediorum fiscal. et domus Augustae.  
 — 11, 73 (72) Quibus ad conductionem praediorum fiscal., etc.  
 (c) **Post-Justinian:**  
 THEOPHILUS, 3, 24 De locatione et conductione.  
 ECLOGA, 13 De conductione, etc.  
 PROCHIRON, 17 De locatione.  
 EPANAGOGA, 24 De locatione.  
 BAS. 19, 11 De eviction., etc.  
 — 19, 19 De eviction., etc.  
 — 20, 1 De actione locati et conducti.  
 — 20, 4 De actione praescriptis verbis.  
 — 53, 4 De nave . . . locata.  
 HEXABIBLOS, 3, 8 De locatione et conductione, etc.

**II. Modern references:—** (§ 1011)

(a) **In general:**

- CIVIL LAW, misunderstandings of the, 6 Am. Law Rev., p. 37.  
 COGGS v. BERNARD, Lord Raymond's Rep. 909.  
 DESCHAMPS, Sur l'expression "locare operas" et le travail comme objet de contrat à Rome (Mélanges Gérardin, p. 157, Paris, 1907).  
 ESMEIN, Les baux perpétuels des formules d'Angers (in his *Mélanges*, p. 383, Paris, 1886).  
 — Les baux de cinq ans du droit romain (in his *Mélanges*, p. 219, Paris, 1886).  
 LONGO, Sulla natura nella "locatio conductio" (Mélanges P. F. Girard, vol. ii, p. 105, Paris, 1912).  
 MACDONELL, Classification of forms and contracts of labor in Roman law, *Journal Soc. of Compar. Legisl.* (1904).  
 MEYNIAL, Note sur la loi "Emptorum," Code, 4, 65, 9 (Mélanges Gérardin, p. 413, Paris, 1907).

(b) **Modern Codes:**

References are to the Civil Code, unless otherwise stated.

- ARGENTINA, 1527-1681; code of Commerce, 856-1017.  
 AUSTRIA, 1090-1174, 970.  
 CHILE, 1915-2013; code of Commerce, 166-232.  
 FRANCE, 1708-1831; code of Commerce, 216-72.  
 GERMANY, 535-80, 611-51; code of Commerce, 425-73, 556-663; Schuster, German law, pp. 257-301.  
 ITALY, 1568-1696; code of Commerce, 388-416, 480-546.  
 JAPAN, 601-42; code of Commerce, 331-52, 538-640.  
 LOUISIANA, 2668-2800.  
 MEXICO, 2434-2544, 2936-3065; code of Commerce, 626-726.  
 PORTO RICO, 1445-1506.  
 PHILIPPINES (same as Spain, Civil Code).  
 QUEBEC, 1600-1700, 2389-2406, 2423-41, 2461-7.  
 RUSSIA, 2201-90.  
 SPAIN, 1542-1603; code of Commerce, 586-651.  
 SWITZERLAND, code of Obligations, 253-304, 319-93, 440-57.  
 III. See also *supra* § 1002, *infra* § 1013; *supra* vol. ii, §§ 792-4.

### § 1012 Partnership: references.

#### I. Texts of Roman law:—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

##### (a) Ante-Justinian:

GAIUS, iii, 135-7, 148-54.

PAUL. Sent., 2, 16 Pro socio.

##### (b) Justinian:

INST. 3, 25 De societate.

DIG. 17, 2 Pro socio.

CODE, 4, 37 Pro socio.

##### (c) Post-Justinian:

THEOPHILUS, 3, 25 De societate.

ECLOGA, 10 De . . . societate.

PROCHIRON, 19 De . . . societate.

— 20 De dissolutione societatis.

EPANAGOGA, 26 De societate.

BAS. 12 De societate, etc.

HEXABIBLOS, 3, 10 De societate.

— 3, 11 De dissolutione societatis.

#### II. Modern references:—

##### (a) In general:

BURDICK, Joint and several liability of partners, 11 Columbia Law Rev., p. 101.

CORBETT, Partnership in Roman and English law, 11 Law Mag. and Rev., p. 219.



SALVADORE, *Affectio societatis*, *Rivista di Diritto Civile* (1911).

(b) **Modern Codes:**

References are to the Civil Code, unless otherwise stated.

ARGENTINA, 1682-1822; code of Commerce, 282-312.

AUSTRIA, 1175-1216.

CHILE, 2053-2115; code of Commerce, 348-423.

FRANCE, 1832-73; code of Commerce, 18.

GERMANY, 705-40; code of Commerce, 110-69; Schuster, *German law*, pp. 302-10.

ITALY, 1697-1736; code of Commerce, 76-113.

JAPAN, 667-88; code of Commerce, 42-118, 235-54.

LOUISIANA, 2801-90.

MEXICO, 2219-2341; code of Commerce, 89-153.

PHILIPPINES (same as Spain, Civil Code).

PORTO RICO, 1567-1610.

QUEBEC, 1830-1900.

RUSSIA, 2126-98.

SPAIN, 1679-1708; code of Commerce, 116-50.

SWITZERLAND, code of Obligations, 530-611.

III. See also *supra* § 1002; vol. ii, §§ 795-9.

**Agency: references.**

§ 1013

I. **Texts of Roman law:—**

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

GAIUS, iii, 135-7, 155-62; iv, 69-74.

PAUL. *Sent.* 1, 3 *De procuratoribus*.

— 2, 6 *De exercitor. et institor*.

— 2, 8 *De institoribus*.

— 2, 9 *De in rem verso*.

— 2, 15 *De mandatis*.

COD. GREGORIAN. 3 *Quod cum eo qui aliena potestate est, negotium gestum, etc.*

COD. THEOD. 2, 31 *Quod jussu*.

VATICAN FRAG. 317-41 *De cognitor. et procurator*.

(b) **Justinian:**

INST. 3, 26 *De mandato*.

— 4, 7 *Quod cum eo in aliena potestate, negotium gestum, etc.*

DIG. 14, 1 *De exercitoria actione*.

— 14, 3 *De institoria actione*.

— 14, 4 *De tributoria actione*.

— 15, 3 *De in rem verso*.

— 15, 4 *Quod jussu*.

- (§1013) — 17, 1 Mandati vel contra.  
 — 46, 1 De fidejussor. et mandatoribus.  
 — 46, 8 Ratam rem haberi et de ratihabitione.  
 — 50, 14 De proxenetis.  
 CODE, 2, 12 (13) De procuratoribus.  
 — 4, 25 De exercitoria et institoria actione.  
 — 4, 26 Quod cum eo qui in aliena potestate negotium gestum . . . vel de peculio seu quod jussu aut de in rem verso.  
 — 4, 35 Mandati.  
 — 4, 36 Si servus se emi mandaverit.  
 — 8, 40 (41) De fidejussor. et mandatoribus.  
 — 11, 57 (56) Ut nullus ex vicinis pro alienis debitis vicin. teneatur.  
 NOV. 4 De fidejussor. et mandatoribus, etc.

(c) **Post-Justinian:**

- THEOPHILUS, 3, 26 De mandato.  
 — 4, 7 Quod cum eo qui in aliena potestate est, negotium gestum, etc.  
 BAS. 8, 2 De procuratoribus, etc.  
 — 9, 11 De . . . ratam rem haberi.  
 — 14, 1 De mandatis, etc.  
 — 18, 1 De actione . . . adv. eum qui aliquem tab-

ernae suae administrandae praeposuit.

- 18, 2 De actione . . . adv. dominum patremve, cum scientibus servus vel filiusfamilias mercatur, etc.  
 — 18, 3 De actione . . . adv. patrem vel dominum . . . cum iis, qui in potestate . . . cum aliis contrahentes . . . in peculio, etc.  
 — 18, 5 De actione de peculio, quae adv. patrem vel dominum, etc.  
 — 18, 6 . . . De peculio actiones, etc.  
 — 18, 7 De actione, quae de in rem domini vel patris verso, etc.  
 — 18, 8 De his, quae jussu domini vel patris quis contrahit, etc.  
 — 26, 1 De fidejussor. et mandatoribus.

- 26, 2 Ut creditores . . . convenient . . . mandatores vel pecuniae constitutae reos vel fidejussores.  
 — 53, 1 De patronis et exercitoribus, etc.  
 — 54, 15 De proxenetis.

**II. Modern references:—**

(a) **In general:**

COGGS *v.* BERNARD, Lord Raymond's Rep. 909.

- GAVET, *De l'allegatio gestis* (Mélanges P. F. Girard, vol. i, p. 499, Paris, 1912).
- LOUBERS, *L'action de in rem verso et les théories de la responsabilité civile*, Paris, 1912.
- RAMADIER, *La représentation des cités d'après l'édit du prêteur* (Études d'hist. jurid. off. à P. F. Girard, vol. i, p. 259 Paris, 1913).
- SAVIGNY, *Das Obligationenrecht*, vol. ii, §§ 54-60.
- WILLISTON, *Contracts for the benefit of a third person*, in the *Civil Law*, 16 *Harv. Law Rev.*, p. 43.
- (b) **Modern Codes:**
- References are to the Civil Code, unless otherwise stated.
- ARGENTINA, 1903-2019; code of Commerce, 221-81.
- AUSTRIA, 1002-44.
- CHILE, 2116-73; code of Commerce, 233-347.
- FRANCE, 1984-2010; code of Commerce, 71-90.
- GERMANY, 652-6, 662-76; code of Commerce, 88, 383-405; Schuster, *German law*, pp. 278, 303.
- ITALY, 1737-63; code of Commerce, 349-87.
- JAPAN, 643-56; code of Commerce, 29-41, 305-30.
- LOUISIANA, 2985-3034.
- MEXICO, 2342-2433; code of Commerce, 273-331.
- PHILIPPINES (same as Spain, Civil Code).
- PORTO RICO, 1611-41.
- QUEBEC, 1701-61.
- RUSSIA, 2291-2334.
- SPAIN, 1709-39; code of Commerce, 88-115, 244-302.
- SWITZERLAND, code of Obligations, 394-406, 425-39, 458-65.
- III. See also *supra* §§ 1002, 1011; vol. ii, §§ 800-803.

**Miscellaneous contracts: references.**

§ 1014

- I. **Texts of Roman law:—**
- For English translations see *supra* §§ 945, 946, 948, 951, 952, 955.
1. **Affreightment.**
- (a) **Ante-Justinian:**
- GAIUS, 4, 71.
- COD. THEOD. 13, 5 *De naviculariis*, const. 9, 26, 29, 32-4.
- (b) **Justinian:**
- INST. 4, 7 *Quod cum eo qui in aliena potestate . . . gestum*, etc., § 2.

(§1014) DIG. 14, 1 De exercitoria actione, frag. 1, § 15, frag. 7.  
CODE. 11, 2 (1) De naviculariis, etc.

NOV. 106, De usuris nauticis.

(c) **Post-Justinian:**

THEOPHILUS, 4, 7 Quod . . . in aliena potestate, etc., § 2.

BAS. 53, 1 De . . . exercitoribus, etc.

HEXABIBLOS, 2, 11 De rebus nauticis.

**2. Banks and banking.**

(a) **Ante-Justinian:**

GAIUS, 3, 131.

(b) **Justinian:**

DIG. 1, 12 De officio praefecti urbi, 1, § 9.

— 2, 13 De edendo, frag. 4, pr., frag. 9, § 2, frag. 10, § 1.

— 2, 14 De pactis, frag. 9, 25, 27.

— 16, 3 Depositi, etc., 7, § 2.

— 42, 5 De rebus auctoritate judicis poss. seu vend., 24, § 2.

— 46, 3 De solutionibus, etc., 39.

NOV. 136 De argentariorum contractibus.

EDICTA (in Appendix I to NOV. ), 7 Forma pragmatica de argentariorum contractibus.

— 9 De argentariorum contractibus.

(c) **Post-Justinian:**

BAS. 23, 4 De argentariorum contractibus.

**3. Insurance.**

DIG. 22, 2 De nautico faenore, 5.

— 35, 2 Ad legem Falcidiam, 68.

**4. Pacts (pacta).**

(a) **Ante-Justinian:**

COD. THEOD. 3, 13 De dotibus, 4.

VATICAN FRAG. 264a, 263, 310.

(b) **Justinian:**

INST. 2, 7 De donation., 2.

INST. 4, 6 De actionibus, 7-9.

DIG. 4, 8 De receptis, etc. frag. 11, § 3, frag. 13, § 1, frag. 27, § 7.

— 13, 5 De pecunia constituta.

— 13, 7 De pigneraticia actione, etc., 1.

— 20, 1 De pignoribus et hypothecis, etc., 4.

CODE. 4, 18 De pecunia constituta.

— 4, 29 Ad SC. Velleianum, 25.

— 5, 11 De dotis promissione, etc., 6.

— 8, 53 (54) De donation., 35, § 5b.

### 5. Public promises and vows (*pollicitationes, vota*).

DIG. 50, 12 De *pollicitationibus*.

BAS. 54, 13 De *pollicitationibus*.

### II. Modern references to all miscellaneous contracts:—

#### (a) In general:

PLATON, *Les banquiers dans la législation de Justinien*, Paris, 1912.

REGISTER, *Notes on commerce and commercial law*, 33 Canadian Law Times, p. 499.

SMITH, *Dictionary of Greek and Roman antiquities*<sup>3</sup>, "*argentarii*."

#### (b) Modern Codes:

References are to the Civil Code, unless otherwise stated.

ARGENTINA, code of Commerce, 492-557, 856-1260.

AUSTRIA, 1288-92.

CHILE, 2258; code of Com-

merce, 166-232, 512-601, 970-1083, 1261-1312.

FRANCE, 1964; code of Commerce, 273-310, 392-6.

GERMANY, code of Commerce, 781-897; Schuster, *German Civil Law*, pp. 312-13.

ITALY, 1951; code of Commerce, 417-53, 547-89, 604-41.

JAPAN, code of Commerce, 384-433, 590-640, 653-79.

LOUISIANA, 2755.

MEXICO, 2705-71; code of 392-448, 727-93, 812-80.

PHILIPPINES, same as Spain, Civil Code.

PORTO RICO, 1693-9, 1704-10.

QUEBEC, 1265, 2407-20, 2442-2593.

RUSSIA, 2199-2200.

SPAIN, 1791-7, 1802-7; code of Commerce, 380-438, 652-718, 737-805.

### III. See also *supra* §§ 1002; vol. ii, §§ 804-8.

### Quasi contracts: references.

§ 1015

#### I. Texts of Roman law:—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

#### 1. In general.

#### (b) Justinian:

INST. 3, 27 De *obligationibus quasi ex contractu*.

DIG. 44, 7 *obligationibus*, etc.  
CODE, 3, 21 *Ubi agi oportet ratiociniis*, etc.

#### (c) Post-Justinian:

THEOPHILUS, 3, 27 De *obligationibus* . . . *quasi ex contractu*, etc.

(§1015) 2. **Unauthorized agency**  
(negotiorum gestio).

(b) **Justinian:**

INST. 3, 27 De oblig. quasi ex contractu, 1.

DIG. 3, 5 De negotiis gestis.

CODE, 2 18 (19) De negotiis gestis.

(c) **Post-Justinian:**

THEOPHILUS, 3, 27 De oblig. . . . quasi ex contractu, etc., 1.

BAS. 17, 1 De negotia aliena gerentibus.

— 17, 2 De actione qua petuntur sumtus utiliter facti.

3. **Money paid by mistake**  
(solutio indebiti, condictio indebiti).

(a) **Ante-Justinian:**

GAIUS, 3, 91.

(b) **Justinian:**

INST. 3, 14 Quibus modis re . . . obligatio, 1.

— 3, 27 De oblig. quasi ex contr., 6-7.

DIG. 12, 6 De condictione indebiti.

— 22, 6 De juris et facti ignorantia.

CODE, 1, 18 De juris et facti ignorantia.

— 4, 5 De condictione indebiti.

(c) **Post-Justinian:**

THEOPHILUS, 3, 14 Quibus modis re . . . obligatio, 1.

— 3, 27, De oblig. . . . quasi ex contr., etc., 6-7.

BAS. 2, 4 De facti et juris ignorantia.

— 24, 6 De eo qui indebitum solvit, etc.

4. **Jettison and general average**  
(lex Rhodia de jactu).

(a) **Ante-Justinian:**

PAULUS, Sent. 2, 7 Ad legem Rhodiam.

(b) **Justinian:**

INST. 2, 1 De rerum divisione, 47-8.

DIG. 14, 2 De lege Rhodia de jactu.

CODE, 11, 6 (5) De naufragiis.

(c) **Post-Justinian:**

THEOPHILUS, 2, 1 De rerum divisione, 47-8.

BAS. 53, 3 De naufragio, etc.

— 53, 8 Capita excerpti juris Rhodiorum navalis.

HEXABIBLOS, 2, 7. De . . . naufragio, etc.

— 2, 11 De rebus nauticis.

II. **Modern references to all quasi contracts:—**

(a) **In general:**

AMES, History of assumpsit, 4 Law Quart. Rev., 480, Harv. Law Rev., April and May, 1888.

- ASHBURNER, *The Rhodian sea law*, Oxford, 1909.
- AUSTIN, *Jurisprudence*<sup>3</sup>, vol. ii, pp. 944-8.
- BARCLAY, *Definition of general average*, 7 *Law Quart. Rev.*, p. 22.
- BENEDICT, *The Rhodian law*, 18 *Yale Law Journal*, p. 242.
- COLUMBIAN INS.CO.v.ASHBY, 13 *Peters* (U. S. Sup. Ct. Rep.), 331.
- DOWALL, *Codification of the law of general average*, 11 *Law Quart. Rev.*, p. 32.
- LOWNDE, *Law of general average*<sup>5</sup>, London, 1912 (contains transl. of maritime codes of various nations).
- OSSIG, *Röm. Wasserrecht*, Leipzig, 1898.
- RUABON STEAMSHIP CO. v. LONDON ASSURANCE CO., *House of Lords Appeal Cases* (1900), 1.
- SAVIGNY, *Obligationenrecht*, vol. ii, § 85.
- *System*, vol. iii, appendix viii.
- SCHOMBERG, *Treatise on the maritime laws of Rhodes*, London, 1786.
- (b) **Modern Codes:**  
References are to the Civil Code, unless otherwise stated.
- ARGENTINA, 818-32, 2322-44; code of Commerce, 1283-1350.
- CHILE, 2284-2313; code of Commerce, 1150-67, 1084-1135.
- FRANCE, 1370-81; code of Commerce, 397-429.
- GERMANY, 677-87, 812-15; code of Commerce, 700-733; Schuster, *German Civil Law*, pp. 351, 361.
- ITALY, 1140-50; code of Commerce, 642-59.
- JAPAN, 697-708; code of Commerce, 641-52.
- LOUISIANA, 2292-2314, 3424.
- MEXICO, code of Commerce, 881-93, 915-44.
- PHILIPPINES, same as Spain, Civil Code.
- PORTO RICO, 1788-1802.
- QUEBEC, 983, 1041-52, 2551-67.
- SPAIN, 1887-1901; code of Commerce, 806-18, 840-69.
- SWITZERLAND, code of Obligations, 419-24.
- III. See also *supra* § 1002; vol. ii, §§ 809-12.

**Torts or delicts: references.**

§ 1016

- I. **Texts of Roman law:—**  
For English translations, see

*supra* §§ 945, 946, 948, 951, 952, 955.

(§ 1016) **I. General principles of delicts; and miscellaneous delicts.**

(a) **Ante-Justinian:**

XII TABLES, xii, 2.

GAIUS, iii, 182; iv, 75-81.

COD. HERMOGENIAN. Ex delictis defunctorum, etc.

COD. THEOD. 9, 20 Victum civiliter agere criminaliter posse.

(b) **Justinian:**

INST. 4, 1 De obligation. . . .  
ex delicto, etc., pr.

— 4, 8 De noxal. action.

DIG. 2, 9 Si ex noxal. causa, etc.

— 9, 4 De noxal. action.

— 44, 7 De obligation., etc.

— 47, 1 De privatis delictis.

CODE, 2, 16 (17) Ut nemini liceat sine iudicis auctoritate signa imprimere rebus, quas alius tenet.

— 2, 34 (35) Si adv. delictum suum.

— 3, 27 Quando liceat sine iudice . . . vindicare, etc.

— 3, 41 De noxal. action.

— 4, 17 Ex delictis defunctorum in quantum heredes convenientur.

— 11, 6 (5) De naufragiis.

(c) **Post-Justinian:**

THEOPHILUS, 4, 1 De obligation. . . . ex delicto, etc., pr.

— 4, 8 De noxal. action.  
BAS. 7, 15 Si dominus servum. . . ut noxae detur, etc.

— 10, 17 Si adv. delictum suum.

— 23, 2 Ne defuncti . . . a creditoribus injuria, etc.

— 24, 7 . . . in quantum heredes teneantur ex delictis defunctorum.

— 43, 7 De multis, quae ex condemnatione iudicis veniunt.

— 53, 2 De nave in jus vocata.

— 60, 1 De pecuniariis poenis, etc.

— 60, 5 . . . quadrupes noxae deduntur.

— 60, 11 De privatis delictis.

— 60, 51 De poenis.

HEXABIBLOS, 1, 3 De actionibus, etc.

— 2, 11 De rebus nauticis.

— 5, 13 Quo tempore creditores adv. defuncti heredes agere possint.

**2. Injury to the person (injuria).**

(a) **Ante-Justinian:**

XII TABLES, viii, 1-4.

GAIUS, iii, 220-25.

PAULUS, Sent. 5, 4 De injuriis.

ULPIAN, Reg. 29 De injuriis.

COLLATIO MOSAIC. ET ROM.  
2 De atroci injuria.



**(b) Justinian :**

INST. 4, 4 De injuriis.

DIG. 9, 3 De his, qui effuderint vel dejecerint.

— 47, 10 De injuriis et famosis libellis.

CODE, 9, 35 De injuriis.

— 9, 36 De famosis libellis.

**(c) Post-Justinian :**

THEOPHILUS, 4, 4 De injuriis.

BAS. 60, 4 De his, qui quid effuderint vel dejecerint.

— 60, 21 De injuriis et famosis libellis.

— 60, 48 Lex Fabia de plagiariis.

**3. Theft (furtum).****(a) Ante-Justinian :**

XII TABLES, viii, 12-17, 20.

GAIUS, iii, 182-208.

PAULUS, Sent. 2, 31 De furtis.

COLLATIO MOSAIC. ET ROM. 7 De furibus, etc.

**(b) Justinian :**

INST. 4, 1 De obligation. . . . ex delicto, §§ 1-19.

DIG. 13, 1 De condictione furtiva.

— 47, 2 De furtis.

— 47, 4 Si quis, qui testamento hereditatem subripuisse, etc.

— 47, 5 Furti adv. nautas, caupones, stabularios.

— 47, 6 Si familia furtum fecisse, etc.

— 47, 7 Arborum furtim (§ 1016) caesarum.

CODE, 4, 8 De condictione furtiva.

— 9, 39 De his qui latrones vel in aliis criminibus reos occultaverint.

**(c) Post-Justinian :**

THEOPHILUS, 4, 1 De obligation . . . ex delicto, §§ 1-19.

BAS. 53, 1 De . . . nautis, et cauponibus, etc.

— 60, 10 De condictione furtiva.

— 60, 11 De furto.

— 60, 14 De furto adv. caupones et stabularios.

— 60, 15 Si familia furtum fecisse, etc.

— 60, 20 De . . . ruina.

**4. Robbery (rapina).****(a) Ante-Justinian :**

XII TABLES, viii, 12.

GAIUS, iv, 209.

PAULUS, Sent. 1, 14 De via publica.

— 5, 26 Ad legem Juliam de vi publica et privata.

NOV. VALENTINIAN. 8 De invasoribus.

**(b) Justinian :**

INST. 4, 2 Vi bonorum raptorum.

DIG. 43, 4 Ne vis fiat ei, qui in possessionem missus erit.

(§1016) — 43, 16 De vi et vi armata.

— 47, 8 Vi bonorum raptorum, etc.

— 48, 7 Ad legem Juliam de vi privata.

CODE, 8, 5 Si per vim . . . absentis perturbata possessio.

— 9, 12 Ad legem Juliam de vi publica seu privata.

— 9, 33 Vi bonorum raptorum.

— 9, 39 De his qui latrones vel in aliis criminibus reos occultaverint.

(c) **Post-Justinian:**

THEOPHILUS, 4, 2 De vi bonorum raptorum.

BAS. 51, 5 Ne vis fiat ei, qui in possession. missus, etc.

— 53, 3 De . . . rapina, etc.

— 58, 23 Quod vi aut clam.

— 60, 17 De bonis raptis, . . . et de vi armata.

— 60, 18 Ex lege Julia de vi publica et privata.

**5. Damage to property (damnum injuria); lex Aquilia; negligence (culpa).**

(a) **Ante-Justinian:**

XII TABLES, viii, §§ 5-16; ix, 9; x, 10.

GAIUS, iii, 210-19.

PAULUS, Sent. 1, 14 Si via publica.

— 1, 15 Si quadrupes damnum intulerit.

— 2, 23a (lex Aquilia).

(b) **Justinian:**

INST. 4, 3 De lege Aquilia.

— 4, 9 Si quadrupes pauperiem, etc.

DIG. 9, 1 Si quadrupes pauperiem, etc.

— 9, 2 Ad legem Aquiliam.

— 39, 2 De damno infecto et . . . projectionibus.

— 47, 7 Arborum furtim caesarum.

— 47, 8 Vi bonorum raptorum.

CODE, 3, 35 De lege Aquilia.

(c) **Post-Justinian:**

THEOPHILUS, 4, 3 De lege Aquilia.

— 4, 9 Si quadrupes pauperiem, etc.

BAS. 60, 2 Si quadrupes pauperiem, etc.

— 60, 3 De lege Aquilia.

— 60, 20 De . . . ruina.

HEXABIBLOS, 6 1 De damno. — leges agrariae, 4 De quadrupedem depredatione.

— leges agrariae, 5 de damno.

— leges agrariae, 6 de caedibus quadrupedum.

**6. Fraud (dolus, fraus).**

(a) **Ante-Justinian:**

XII TABLES, viii, 19.

PAULUS, Sent. 1, 7 De integri restitutione.

— 1, 8 De dolo.

COD. GREGORIAN. 3 Si major,  
etc.

COD. THEOD. 2, 14 De his,  
qui potentiorum nomina in  
lite praetendunt, etc.

— 2, 15 De dolo malo.

(b) **Justinian:**

DIG. 4, 3 De dolo malo.

— 11, 6 Si mensor falsum  
modum dixerit.

— 42, 8 Quae in fraudem  
creditorum facta sunt,  
etc.

— 43, 5 De tabulis exhi-  
bendis.

— 43, 29 De homine libero  
exhibendo.

— 43, 30 De liberis ex-  
hibendis.

— 44, 4 De doli mali . . .  
exceptione.

CODE, 2, 20 (21) De dolo  
malo.

— 7, 75 De revocandis his  
quae per fraudem alienata,  
etc.

(c) **Post-Justinian:**

BAS. 9, 8 Quae in fraudem  
creditorum facta, etc.

— 10, 3 De dolo malo.

— 31, 8 Si mulier ventris  
nomine, etc.

— 51, 4 De doli mali . . .  
exceptione.

— 60, 9 Si mensor falsum  
modum dixerit.

7. **Intimidation (metus, vis).** (§ 1016)

(a) **Ante-Justinian:**

PAULUS, Sent. 1, 7 De inte-  
gri restitutione.

COD. GREGORIAN. 2 De his  
quae vi metusve causa,  
etc.

(b) **Justinian:**

DIG. 4, 2 Quod metus causa,  
etc.

— 44, 4 De . . . metus ex-  
ceptione.

CODE, 2, 19 (20) De his qui vi  
metusve causa, etc.

(c) **Post-Justinian:**

BAS. 10, 2 Quod metus causa,  
etc.

— 51, 4 De . . . metus ex-  
ceptione.

HEXABIBLOS, 1, 11 De neces-  
sitate et vi.

II. **Modern references (all  
torts or delicts):—**

(a) **In general:**

DE VILLIERS, *Malice in the  
English and Roman law of  
defamation*, 17 *Law Quart.  
Rev.*, p. 388.

— *Nuisances in Roman  
law*, 13 *Law Quart. Rev.*,  
p. 387.

DE WITT, *Position of the law  
of torts in the Spanish  
system*, 6 *Mich. Law Rev.*,  
p. 137.

- (§ 1016) ESMEIN, *La poursuite du vol*, etc. (Mélanges Esmein, p. 244, Paris, 1886).
- GIRARD, *Les jurés de l'action d'injurés* (Mélanges Gérardin, p. 255, Paris, 1907).
- GRIFFITH, Allen *v.* Flood, sidelights from Roman law (*Journal of Compar. Legisl.*, 1899).
- GRUEBER, *Roman law of damage to property—a commentary on the lex Aquilia*, Oxford, 1886.
- Review of this book by Muirhead, 2 *Law Quart. Rev.*, p. 379.
- HUVELIN, *Sur un texte d'Alfenus Varus. — Dig. 9, 2, 52, 1* (Mélanges P. F. Girard, vol. i, p. 559, Paris, 1912).
- IHERING, *Schuldmoment im röm. Privatrecht*.
- (The above work has been translated into French by MEULENAERE), *De la faute en droit privé*, Paris, 1880.
- KENNILL *v.* ABBOTT, 4 Vesey sr., p. 802, 25 Eng. Ruling Cases, p. 480 (Fraud).
- LABORDERIE, *Essai sur la répression civile du furtum — "condictio furtiva,"* 36 *Rev. gén. de droit*, p. 20.
- MONRO, *Lex Aquilia*, London, 1898.
- NABER, *Ad noxalem injuriarum actionem* (Mélanges Gérardin, p. 467, Paris, 1907).
- PACCHIONI, A disputed point in the *lex Aquilia*, 4 *Law Quart. Rev.*, p. 178.
- PISSARD, *Duci vel ferri jubere. La ductio jussu praetoris dans . . . les actions noxales* (Études d'hist. jurid. off. à P. F. Girard, vol. i, p. 241, Paris, 1913).
- ROLIN, *L'abordage*, Paris, 1899.
- SAVIGNY, *Obligationenrecht*, vol. ii, §§ 82–4.
- SERAFINI, *Fraudulent preference in Roman law* (Mispoulet's review of this book in 4 *Law Quart. Rev.*, p. 81).
- SKOTTOWE, *Roman law of damage*, 10 *Law Mag. and Rev.*, p. 47.
- SLANDER and libel, 6 *Am. Law Reg. and Rev.*, pp. 598, 599.
- VILLIERS, *Roman and Roman-Dutch law of injuries* (translation of book 47, title 10, of Voet's Commentaries), London, 1899.
- WALTON, *Motive as an element in torts in the Common and in the Civil Law*, 22 *Harvard Law Rev.*, p. 501.

WARMÉ, *De l'action Paulienne en droit romain*, Paris 1880 (fraud).

(b) **Modern Codes:**

References are to the Civil Code, unless otherwise stated.

ARGENTINA, 1107-70; code of Commerce, 1261-73.

AUSTRIA, 1293-1341.

CHILE, 2314-34; code of Commerce, 1129-49.

FRANCE, 1370, 1382-6; code of Commerce, 407.

GERMANY, 823-53; code of Commerce, 734-9; Schuster, *German law*, p. 345.

ITALY, 1151-6; code of Commerce, 660-65.

JAPAN, 709-24; code of Commerce, 650-51.

LOUISIANA, 2292, 2315-24.

MEXICO, 1458-87; code of Commerce, 901-14.

PHILIPPINES (same as Spain, Civil Code).

PORTO RICO, 1803-11.

QUEBEC, 983, 1053-5.

RUSSIA, 609-89.

SPAIN, 1887, 1902-10; code of Commerce, 826-39.

SWITZERLAND, code of Obligations, 41-67.

III. See also *supra* §§ 986, 1002, *infra* § 1017; *supra* vol. ii, §§ 449, 813-32.

**Quasi delicts (including the liability of carriers and of inn-keepers): references.**

I. **Texts of Roman law:** —

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

(b) **Justinian:**

INST. 4, 5 *De obligation. . . . quasi ex delicto*, etc.

DIG. 4, 9 *Naute caupones*, etc.

— 5, 1 *De judiciis*, etc., frag. 15, § 1, frag. 16.

— 9, 2 *Ad legem Aquiliam*, 29, § 7.

— 9, 3 *De his, qui effuderint vel dejecerint*.

— 44, 7 *De obligation.*, etc., 5, §§ 4-6.

— 47, 5 *Furti adv. nautas, caupones*, etc.

— 47, 9 *De . . . naufragio*, etc.

CODE, 11, 2 (1) *De naviculariis*, etc.

(c) **Post-Justinian:**

THEOPHILUS, 4, 5 *De obligation. . . . quasi ex delicto*, etc.

BAS. 53, 1 *De . . . nautis et cauponibus*, etc.

- 53, 3 De . . . naufragio, etc.  
 — 60, 4 De his qui quid effuderint vel dejecerint.  
 — 60, 14 De furto adv. caupones, etc.

## II. Modern references:—

### (a) In general:

- AUSTIN, *Jurisprudence*<sup>3</sup>, vol. ii, pp. 944–8.  
 COGGS *v.* BERNARD, Lord Raymond's Rep. 909.  
 LANE *v.* COTTON, 12 Mod. Rep. 484, 4 Taunt. Rep. 628.  
 MOORE, *Carriers*<sup>2</sup>, New York, 1914.  
 MORS. *v.* SLEW, T. Raymond's Rep. 220.  
 NUGENT *v.* SMITH, 1 Com. Pleas Div. 423.  
 SAVIGNY, *Obligationenrecht*, vol. ii, § 85.

### (b) Modern Codes:

References are to the Civil Code, unless otherwise stated.

- ARGENTINA, 1107–70, 1623–5, 2229–37.  
 AUSTRIA, 970, 1293–1341.  
 CHILE, 2013–21, 2314–34.  
 FRANCE, 1370, 1382–6, 1952.  
 GERMANY, 701–4, 823–53; code of Commerce, 429–607; Schuster, *German law*, pp. 154–60.  
 ITALY, 1151–6, 1629–31, 1866–8.  
 JAPAN, 709–24; code of Commerce, 336–9, 354.  
 LOUISIANA, 2751, 2292, 2315–24, 2965.  
 MEXICO, 1458–9, 2512.  
 PHILIPPINES (same as Spain).  
 PORTO RICO, 1504–5, 1685–6, 1803–11.  
 QUEBEC, 983, 1053–5, 1672, 1814.  
 RUSSIA, 609–89.  
 SPAIN, 1601–2, 1783–4, 1887, 1902–10.  
 SWITZERLAND, code of Obligations, 41–67, 447–9, 487.

III. See also *supra* §§ 1002, 1016; vol. ii, §§ 833–4.

## § 1018 Civil procedure: references.

### I. Texts of Roman law:—

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

### (a) Ante-Justinian:

XII TABLES, i–iii; viii, 22–3; ix, 3–4.

- LEX *Acilia repetundarum*, 122 B.C. (translated by Hardy, *Six Roman laws*, pp. 10–34, Oxford, 1911).  
 GAIUS, iv, 1–187.  
 PAULUS, *Sent.* 1, 1a.  
 — 1, 2 De *procuratoribus et cognitoribus*.

- 1, 3 De procuratoribus.
- 1, 4 De negotiis gestis.
- 1, 5 De calumniatoribus.
- 1, 9a.
- 1, 10 De plus petendo.
- 1, 11 De satisdando.
- 1, 13a De iudicato.
- 1, 19 Quemadmodum actiones per infitiationem duplentur.
- 2, 1 De . . . jurejurando.
- 5, 5a De effectu sententiarum et finibus litium.
- 5, 5b.
- 5, 6 De interdictis.
- 5, 15 De testibus.
- 5, 16 De quaestionibus servorum.
- 5, 28 Ad legem Juliam repetundarum.
- 5, 32 Quando appellandum est.
- 5, 33 De cautionibus et poenis appellationum.
- 5, 34 De litteris dimissoriis.
- 5, 35 De reddendis causis appellationum.
- 5, 36 Post provocationem.
- 5, 37 De meritis appellationibus.
- COD. GREGORIAN. 1, 12 De postulando.
- 2 De iudiciis.
- 3 De jurejurando.
- 3 De petitione hereditatis.
- 3, 12 Si certum petatur. (§1018)
- 10 Quibus res iudicata non noceat.
- 10 De confessis.
- COD. HERMOGENIAN. Ubi agi debeat.
- De calumniatoribus et plus petendo.
- De instrumentis.
- De jurejurando.
- COD. THEOD. 1, 20 De officio iudicum civilium.
- 2, 1 De jurisdictione et ubi quis convenire debeat.
- 2, 2 Ne in sua causa quis iudicet.
- 2, 3 De omissa actionis impetratione.
- 2, 4 De denuntiatione vel editione rescripti.
- 2, 6 De temporum cursu, etc.
- 2, 9 De pactis et transactionibus.
- 2, 10 De postulando.
- 2, 11 De erroribus advocatorum.
- 2, 12 De cognitoribus et procurator.
- 2, 13 De actionibus ad potentes translatis.
- 2, 18 De iudiciis.
- 4, 5 De litigiis.
- 4, 16 De re iudicata.
- 4, 17 De sententiis ex periculo recitandis.
- 4, 18 De fructibus et litis expensis.

(§ 1018) — 4, 19 De usuris rei judicatae.

— 4, 21 Quorum bonorum.

— 4, 22 Unde vi.

— 4, 23 Utrubi.

— 9, 10 Ad legem Juliam de vi publica et privata.

— 9, 11 De privati carceris custodia.

— 11, 29 De relationibus.

— 11, 30 De appellationibus.

— 11, 31 De reparationibus appellationum.

— 11, 32 De secundo lapsu.

— 11, 34 De his qui per metum judicis non appellaverunt.

— 11, 35 Si pendente appellatione mors venerit.

— 11, 36 Quorum appellationes non recipiantur.

— 11, 37 Si de momento fuerit appellatum.

— 11, 38 De possession. ab eo, qui his provocaverit, transferendo.

— 11, 39 De fide testium et instrumentorum.

— 12, 9 De his, quae ex publica conlatione inlata sunt, non usurpandis.

— 15, 14 De infirmandis quae sub tyrannis aut barbaris gesta sunt.

COLLATIO MOSAIC. ET ROM., 8 De falso testimonio.

— 9 De familiaris testimonio non admittendo.

NOV. MARCIAN. 1 Neminem

exhiberi de provincia nisi ad relationem judicis a quo fuerit appellatum.

NOV. THEOD. 10 De postulando et perpetuanda advocacy.

— 13 Contra sententias, etc.

NOV. VALENTINIAN. 2 De postulando.

VATICAN FRAG. 317-41 De cognitor. et procurator.

#### (b) Justinian:

INST. 4, 6 De actionibus.

— 4, 10 De his quos agere possumus.

— 4, 11 De satisfactionibus.

— 4, 12 De perpetuis et temporalibus actionibus et quae ad heredes vel in heredes transeunt.

— 4, 13 De exceptionibus.

— 4, 14 De replicationibus.

— 4, 15 De interdictis.

— 4, 16 De poena temere litigantium.

— 4, 17 De officiis judicis.

DIG. 1, 21 De officio ejus cui mandata est jurisdictio.

— 2, 1 De jurisdictione.

— 2, 3 Si quis jus dicenti non obtemperaverit.

— 2, 4 De in jus vocando.

— 2, 5 Si quis in jus vocatus non ierit sive quis eum vocaverit, quem ex edicto non debuerit.

— 2, 6 In jus vocati ut eant aut satis vel cautum dent.



- 2, 7 Ne quis eum qui in jus vocabitur vi eximat.
- 2, 8 Qui satisfacere cogantur vel jurato promittant, etc.
- 2, 9 Si ex noxali causa agatur, quemadmodum caveatur.
- 2, 10 De eo per quem factum erit quominus quis in iudicio sistat.
- 2, 11 Si quis cautionibus in iudicio sistendi causa, etc.
- 2, 13 De edendo.
- 3, 1 De postulando.
- 3, 3 De procuratoribus, etc.
- 3, 6 De calumniatoribus.
- 4, 7 De alienatione iudicii mutandi causa facta.
- 5, 1 De iudiciis.
- 11, 1 De interrogationibus, etc.
- 12, 2 De iure iurando, etc.
- 12, 3 De in litem iurando.
- 16, 3 Depositi vel contra, 1, § 26.
- 21, 3 De exceptione rei venditae et traditae.
- 22, 3 De probationibus et praesumptionibus.
- 22, 4 De fide instrumentorum, etc.
- 22, 5 De testibus.
- 42, 1 De re iudicata et de effectu sententiarum et de interlocutionibus.
- 42, 2 De confessis. (§ 1018)
- 42, 4 Quibus ex causis in possessionem datur.
- 42, 5 De rebus auctoritate iudicis possidendis seu vendundis.
- 43, 1 Interdictis sive extraordinariis actionibus, etc.
- 43, titles 2-23 (give a list of all the interdicts, such as Quorum bonorum, Utrubi, etc.).
- 44, 1 De exceptionibus, praescriptionibus, et praedictis.
- 44, 2 De exceptione rei iudicatae.
- 44, 3 De diversis praescriptionibus, etc.
- 44, 4 De doli mali et metus exceptione.
- 44, 5 Quarum rerum actio non datur.
- 44, 6 De litigiosis.
- 46, 5 De stipulationibus praetoriis.
- 46, 7 Judicatum solvi.
- 48, 20 De bonis damnatorum.
- 49, 1 De appellationibus et relationibus.
- 49, 2 A quibus appellari non licet.
- 49, 3 Quis a quo appellatur.
- 49, 4 Quando appellandum sit et intra quae tempora.

- (§1018) — 49, 5 De appellationibus recipiendis vel non.
- 49, 6 De libellis dimissoriis, etc.
- 49, 7 Nihil innovari appellatione interposita.
- 49, 8 Quae sententiae sine appellatione rescindantur.
- 49, 9 An per alium causae appellationum reddi possunt.
- 49, 10 Si tutor curator magistratusve creatus appellaverit.
- 49, 11 Eum qui appellaverit in provincia defendi.
- 49, 12 Apud eum, a quo appelletur, aliam causam agere compellendum.
- 49, 13 Si pendente appellatione mors intervenerit.
- 50, 13 De variis et extraordinariis cognitionibus et si iudex litem suam fecisse dicetur.
- CODE, 1, 20 Quando libellus principi datus litis contestationem facit.
- 1, 21 Ut lite pendente post provocationem . . . nulli liceat imperatore supplicare.
- 1, 25 De his qui ad statuas confugiunt.
- 1, 45 De officio civilium iudicum.
- 1, 47 De officio diversorum iudicum.
- 1, 48 Ut omnes tam civiles quam militares iudices, etc.
- 1, 50 De officio ejus qui vicem alicujus iudicis obtinent.
- 1, 53 De contractibus iudicum . . . et inhibendos donationibus in eos, etc.
- 1, 54 De modo multarum quae ab iudicibus infliguntur.
- 2, 1 De edendo.
- 2, 2 De in jus vocando.
- 2, 3 De pedaneis iudiciis.
- 2, 6 De postulando.
- 2, 9 (10) De errore advocatorum vel libellos seu preces concipientum.
- 2, 12 (13) De procuratoribus.
- 2, 13 (14) Ne liceat potentioribus patrocinium litigantibus praestare vel actiones in se transferre.
- 2, 14 (15) De his, qui potentiorum nomine titulos praediis adfigunt vel eorum nomina in lite praetendunt.
- 2, 16 (17) Ut nemini liceat sine iudicis auctoritate signa imprimere rebus, quas alius tenet.
- 2, 17 (18) Ne fiscus vel res publica procuracionem alicui patrocinii causa in lite praestat.

- 2, 26 (27) Si adversus rem judicatam.
- 2, 46 (47) Ubi et apud quem cognitio restitutionis, etc.
- 2, 47 (48) De . . . iudicio in integrum restitutio.
- 2, 48 (49) Etiam per procurator. . . in integrum restitutionis, etc.
- 2, 49 (50) In integrum restitutione postulata, etc.
- 2, 52 (53) De temporibus in integrum restitutionis, etc.
- 2, 54 (55) De alienatione iudicii mutandi causa facta.
- 2, 57 (58) De formulis et impetratione actionum sublatis.
- 2, 58 (59) De jure jurando propter calumniam dando.
- 3, 2 De sportulis et sumptibus in diversis iudiciis faciendis et de executoribus litium.
- 3, 4 Qui pro sua jurisdictione iudices dare, etc.
- 3, 5 Ne quis in sua causa iudicet, etc.
- 3, 6 Qui legitimam personam in iudiciis habent vel non.
- 3, 7 Ut nemo invitus agere vel accusare cognatur.
- 3, 8 De ordine iudiciorum.
- 3, 9 De litis contestatione.
- 3, 10 De plus peti- (§ 1018) tionibus.
- 3, 13 De jurisdictione, etc.
- 3, 19 Ubi in rem actio exerceri debet.
- 3, 21 Ubi agi oportet ratiociniis, etc.
- 3, 22 Ubi causa status agi debeat.
- 3, 23 Ubi quis de curiali vel cohortali aliave conditione conveniatur.
- 3, 24 Ubi senatores vel clarissimi civiliter vel criminaliter conveniantur.
- 3, 25 In quibus causis militantes fore praescriptione uti non possunt.
- 3, 27 Quando liceat sine iudice . . . vindicare se, etc.
- 3, 40 De consortibus ejus litis.
- 3, 42 Ad exhibendum.
- 4, 1 De . . . jurejurando.
- 4, 2 Si certum petatur.
- 4, 19 De probationibus.
- 4, 20 De testibus.
- 4, 21 De fide instrumentorum, etc.
- 4, 22 Plus valere quod agitur, etc.
- 4, 31 De compensationibus.
- 5, 53 De in litem jurando.
- 5, 61 De actore a tutore seu curando dando.

- (§ 1018) CODE, 5, 75 De magistratibus conveniendis.
- 7, 42 De sententiis praefectorum praetorio.
- 7, 43 Quomodo et quando iudex sententiam proferre debet, etc.
- 7, 44 De sententiis ex periculo recitandis.
- 7, 45 De sententiis et interlocutionibus omnium iudicum.
- 7, 46 De sententia quae sine certa quantitate prolata est.
- 7, 47 De sententiis, quae pro eo quod interest proferuntur.
- 7, 48 Si non a competenti iudice iudicatum esse dicatur.
- 7, 49 De poena iudicis qui male iudicavit, vel ejus, qui iudicem vel adversarium corrumpere curavit.
- 7, 50 Sententiam rescindi non posse.
- 7, 51 De fructibus et litis expensis.
- 7, 52 De re iudicata.
- 7, 53 De executione rei iudicatae.
- 7, 54 De usuris rei iudicatae.
- 7, 55 Si plures una sententia condemnati sunt.
- 7, 56 Quibus res iudicata non nocet.
- 7, 57 Comminationes, epistulas, pragmata, subscriptiones auctoritatem rei iudicatae non habere.
- 7, 58 Si ex falsis instrumentis vel testimoniis iudicatum erit.
- 7, 59 De confessis.
- 7, 60 Inter alios acta vel iudicata aliis non nocere.
- 7, 61 De relationibus.
- 7, 62 De appellationibus, etc.
- 7, 63 De temporibus . . . appellationibus, etc.
- 7, 64 Quando provocare necesse non est.
- 7, 65 Quorum appellationes non recipiantur.
- 7, 66 Si pendente appellatione mors intervenerit.
- 7, 67 De his qui per metum iudicis non appellaverunt.
- 7, 68 Si unus ex pluribus appellaverit.
- 7, 69 Si de momentaria possessione fuerit appellatum.
- 7, 70 Ne liceat in una eadem causa tertio provocare, etc.
- 7, 71 Qui bonis cedere possunt.
- 7, 72 De bonis auctoritate iudicis possidendis seu venumdandis, etc.
- 8, 1 De interdictis.

- 8, titles 2-9 (give a list of interdicts such as *Quorum bonorum*, *Unde vi*, etc.).
- 8, 35 (36) *De exceptionibus sive praescriptionibus*.
- 8, 36 (37) *De litigiosis*.
- 9, 5 *De privatis carceribus inhihendis*.
- 9, 31 *Quando civilis actio criminali praejudicat et an utraque ab eodem exerceri*.
- 12, 52 (53) *De apparitoribus praefect. praetorio*, etc.
- 12, 53 (54) *De apparitoribus praefecti urbis*.
- 12, 54 (55) *De apparitoribus magistrorum militum*, etc.
- 12, 56 (57) *De apparitoribus comitis Orientis*.
- 12, 58 (59) *De apparitoribus praefecti annonae*.
- 12, 60 (61) *De executoribus*, etc.
- 12, 63 (64) . . . *Judicium litterarum*, etc.
- Nov. 8 *Ut iudices sine quoquo suffragio fiant*.
- 20, *De administrantibus officiis in sacris appellationibus*.
- 23 *De appellationibus et intra quae tempora debeat appellari*.
- 41 *Lex ut bonus*.
- 47 *Ut praeponatur imperatoris nomen documentis, et ut Latinis litteris* (§ 1018) *apertius tempora perscribantur*.
- 49 *De his qui ingrediuntur ad appellationem . . . et de jurejurando dilationis*, etc.
- 50 *Appellationes ex quinque provinciis Caria et Cypro Cycladibus insulis et Mysia et Scythia apud quem oporteat examinari*.
- 51 *Scenicas . . . si jurejurandum dent*, etc.
- 53 *De exhibendis . . . et ut qui conveniuntur post vicesimam diem praesentur iudicibus . . . et ante litis congestionem . . . et de hypothecis appellantur*, etc.
- 69 *Ut omnes oboediant iudicibus provinciarum*, etc.
- 71 *Ut . . . clarissimis . . . in pecuniariis licere causis et per procuratorem et per se litigare*.
- 75 *De appellationibus Siciliae*.
- 79 *Apud quos oportet causam dicere monachos*, etc.
- 82 *De iudicibus . . . et cum jurejurando . . . et ut appellationes*, etc.
- 83 *Ut clerici apud proprios episcopos primum conveniantur et post haec apud civiles iudices*.
- 90 *De testibus*.

(§1018) NOV. 93 De appellationibus.

— 111 De litigiosis, etc.

— 113 In medio litis non sacras formas aut sacras jussiones, sed secundum generales leges dirimi negotia.

— 115 Ut cum de appellatione cognoscitur secundum illas leges debeat judicari quae tempore datae sententiae obtinebant, non secundum eas quae postea promulgatae sunt, etc.

— 124 Ut litigantes jurent quia neque promiserunt dare iudicibus neque dabunt, et de sportulis, etc.

— 125 Ut iudices non expectent jussionem, sed quae videntur eis decernant.

— 126 Exemplum sacrae legis de appellationibus.

— 152 Ne sacrae formae quae de publicis procedunt aliter valeant nisi si . . . insinuatae, etc.

CONST. DISPERSAE (in Appendix to the Novels), 4 Ne quis metetur, etc.

(c) **Post-Justinian:**

THEOPHILUS, iv, titles 6, 10-17. For list of titles, see supra "b", Justinian, INST.

ECLOGA, 14 De testibus, etc.

PROCHIRON, 27 De testibus.

EPANAGOGA, 7 De magistratibus, etc.

— 11 De ordine judiciorum.

— 12 De testibus.

— 13 De instrumentis.

BAS. 6, 24 De officio iudici . . . et jurisdictio.

— 7, 3 De ordine judiciorum et de jurisdictione.

— 7, 4 De executoribus, etc.

— 7, 5 De iudicibus et ubi quisque agere et conveniri, etc.

— 7, 6 De iudiciis et sumtibus eorum, et pluspetitione et mora, et sportulis.

— 7, 7 Si quis jus dicenti non obtemperaverit.

— 7, 8 De his, qui in jus vocati sequi debent aut non debent.

— 7, 9 Ne liceat potentibus personis patrocinium litigantibus praestare, vel actiones in se transferre.

— 7, 10 De his, qui potentiorum nomine titulos praedii affigunt, vel eorum nomina in lites praetendunt.

— 7, 11 Ut nemo privatus titulos praedii . . . vel alienis imponat, aut nomen regium suspendat, et ne fiscus, etc.

— 7, 12 In jus vocatus ut cautionem praestet.

— 7, 13 Ne quis eorum, qui in jus vocatur, vi eximat.

- 7, 14 Qui satisfacere coguntur, vel jurato promittunt, . . . et de formulis, et de jurejurando propter calumniam dando.
- 7, 16 De milliaribus definitis peregre profecturo, etc.
- 7, 18 De edendo.
- 7, 19 De his, qui legitimam personam in judiciis habeant, vel non; et ut nemo invitatus agere vel accusare cogatur.
- 8, 1 De postulando.
- 8, 2 De procuratoribus et defensoribus.
- 9, 1 De appellationibus.
- 9, 2 De his, qui in causis appellationum officia administrant.
- 9, 3 De re judicata, etc.
- 9, 4 De confessis.
- 9, 7 De rebus auctoritate judicum possidendis aut veniundis, etc.
- 9, 10 Cautio judicati sive condemnationis.
- 10, 9 Si adversus rem judicatam.
- 19, 12 De exceptione rei venditae et traditae.
- 21, 1 De testibus, etc.
- 22, 1 De probationibus et praesumptionibus, et fide instrumentorum, etc.
- 22, 3 De privatis scripturis, quae a reo proferuntur.
- 22, 4 Quomodo instrumentis, quae apud iudices insinuata sunt, fidem adhiberi oporteat.
- 22, 5 De jurejurando, sive voluntario, hoc est, delato sive necessario, sive judiciali.
- 22, 6 De jurejurando in litem.
- 23, 3 De usuris et fructibus et causis et omni accessione et mora.
- 38, 15 De jurejurando in litem.
- 42, 4 De interrogatione et responsione in jure facta.
- 43, 4 De praetoriis stipulationibus.
- 43, 5 De litigiis.
- 51, 1 De exceptionibus et praejudiciis.
- 51, 2 De rei judicatae exceptione.
- 51, 4 De doli mali et metus exceptione.
- 51, 5 Ne vis fiat ei, qui in possessionem missus erit.
- 53, 2 De nava.
- 54, 11 De decretis, etc.
- 54, 14 De diversis et extraordinariis cognitionibus, et si iudex litem suam fecisse dicatur.
- 54, 32 Quo quisque ordine conveniatur.
- 54, 35 De his, qui ex officio . . . conveniuntur.

- (§1018) BAS. 56, 19 *Ne sacrae formae de causis publicis emissae aliter valeant, quam si insinuatae fuerint, etc.*  
 — 58, 14 *De interdictis.*  
 — 58, titles 15–17 (contain a list of interdicts).  
 — 60, 50 *De quaestione.*  
 — 60, 55 *Ut ne sint privati carceres.*  
 HEXABIBLOS (preface, first section), *Judicum prae-paratio sive iustitia.*  
 — (preface, second section), *Condemnatio adv. judices proposita a Leone et Alexandro . . . principibus.*  
 — 1, 2 *De actore et reo.*  
 — 1, 4 *De judiciali sententia et re judicata.*  
 — 1, 6 *De testibus.*  
 — 1, 7 *De jurejurando.*  
 — 1, 8 *De instrumentis.*  
 — 2, 3 *De repetitione et amissione.*  
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- (b) **Modern Codes:**
- See the Codes of Civil Procedure of the various countries.
- III. See also *infra* § 1019; *supra* vol. ii, §§ 716, 754, 835-72.

**The Roman judicial organization (including the courts, § 1019 holidays, bar, and notaries): references.**

- A. Courts and judicial organization.**
- I. Texts of Roman law: —**
- For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.
- (a) **Ante-Justinian:**
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- 1, 6 *De officio praefecti urbis*.
- 1, 8 *De officio quaestoris*.
- 1, 12 *De officio proconsulis et legati*.
- 1, 13 *De officio comitis Orientis*.
- 1, 15 *De officio vicarii*.
- 1, 16 *De officio rectoris provinciae*.
- 1, 17 *De officio rationalis*, etc.
- 1, 18 *De officio praefecti vigilum*.
- 1, 20 *De officio iudicum civilium*.
- 1, 21 *De officio iudicum militarium*.
- 1, 22 *De officio iudicum omnium*.
- 1, 29 *De defensoribus civitatum*.
- 1, 33 *De adessoribus*, etc.
- 6, 4 *De praetoribus et quaestoribus*.

- (§ 1019) — 6, 6 De consulibus, praefectis militum et patriciis.  
 — 6, 7 De praefectis praetorio sive urbis et magistris militum.  
 — 6, 12 De comitibus consistorianis.  
 — 6, 17 De comitibus qui provincias regunt.  
 — 6, 18 De comitibus vacantibus.  
 — 6, 19 De consularibus et praesidibus.  
 — 8, 8 De executoribus, etc.  
 — 12, 12 De legatis, etc.  
 NOV. MARJORIAN. 3 De defensoribus civitatum.  
 NOV. VALENTINIAN. 22 De officio . . . praefectorum praetorio.
- (b) **Justinian:**
- DIG. 1, 2 De origine . . . magistratum, etc., §§ 13-34.  
 — 1, 9 De senatoribus.  
 — 1, 10 De officio consulis.  
 — 1, 11 De officio praefecti praetorio.  
 — 1, 12 De officio praefecti urbi.  
 — 1, 13 De officio quaestoris.  
 — 1, 14 De officio praetorum.  
 — 1, 15 De officio praefecti vigillum.  
 — 1, 16 De officio proconsulis et legati.  
 — 1, 17 De officio praefecti Augustalis.  
 — 1, 18 De officio praesidis.  
 — 1, 19 De officio procuratoris Caesaris.  
 — 1, 21 De officio ejus cui mandata est jurisdictio.  
 — 1, 22 De officio assessorum.  
 — 50, 15 De censibus.  
 CODE, 1, 4 De episcopali audientia.  
 — 1, 19 De precibus imperatori offerendis et de quibus rebus supplicare liceat vel non.  
 — 1, 26 De officio praefectorum praetorii Orientis et Illyrici.  
 — 1, 27 De officio praefecti praetorio Africae et de omni ejusdem dioecesis statu.  
 — 1, 28 De officio praefecti urbis.  
 — 1, 30 De officio quaestoris.  
 — 1, 35 De officio proconsulis, et legati.  
 — 1, 36 De officio comitis Orientis.  
 — 1, 37 De officio praefecti Augustalis.  
 — 1, 38 De officio vicarii.  
 — 1, 39 De officio praetorum.  
 — 1, 40 De officio rectoris provinciae.

- 1, 43 De officio praefecti vigillum.
- 1, 44 De officio praefecti annonae.
- 1, 45 De officio civilium iudicum.
- 1, 47 De officio diversorum iudicum.
- 1, 48 Ut omnes tam civiles quam militares iudices, etc.
- 1, 50 De officio ejus qui vicem alicujus iudicis obtinet.
- 1, 51 De adsectoribus.
- 1, 52 De annonis et . . . assessorum, etc.
- 1, 53 De contractibus iudicum . . . et inhibendis donationibus in eos, etc.
- 1, 54 De modo multarum quae ab iudices infliguntur.
- 1, 55 De defensoribus civitatum.
- 1, 56 De magistratibus municipalibus.
- 1, 57 De officio iudicis Alexandriae.
- 2, 3 De pedaneis iudiciis.
- 3, 4 Qui pro sua jurisdictione iudices dare, etc.
- 3, 5 Ne quis in sua causa iudicet, etc.
- 3, 8 De ordine iudiciorum.
- 3, 14 Quando imperator inter pupillos vel viduas vel miserabiles personas (§1019) cognoscat, etc
- 3, 26 Ubi causae fiscales vel divinae domus hominumque ejus agantur.
- 7, 42 De sententiis praefectorum praetorio.
- 12, 2 De praetoribus, etc.
- 12, 3 De consulibus . . . et de praefectis, et magistris militum et patriciis.
- 12, 4 De praefectis praetorio, etc.
- 12, 6 De quaestoribus, magistris officiorum comitibus sacrarum largitionum, etc.
- 12, 10 De comitibus consistorianis.
- 12, 25 (26) De castrensiis et ministerianis.
- 12, 52 (53) De apparitoribus praefectum praetorio, etc.
- 12, 53 (54) De apparitoribus praefecti urbis.
- 12, 54 (55) De apparitoribus magistrorum militum.
- 12, 56 (57) De apparitoribus comitis Orientis.
- 12, 58 (59) De apparitoribus praefecti annonae.
- 12, 59 (60) De diversis officiis et apparitoribus iudicum, etc.
- 12, 60 (61) De exsecutoribus.

- (§1019) — 12, 63 (64) . . . Insinuatores constitutionum et aliarum sacrarum vel judicialium litterarum, etc.  
 Nov. 13 De praetoribus populi.  
 — 15 De defensoribus civitatum.  
 — 17 De mandatis principum.  
 — 20 De administrantibus officiis in sacris appellationibus.  
 — 24 De praetore Pisidiae.  
 — 25 De praetore Lycaoniae.  
 — 26 De praetore Thraciae.  
 — 27 De comite Isauriae.  
 — 28 De moderatore Helenoponti.  
 — 29 De praetore Paphlagoniae.  
 — 30 De proconsule Cappadociae.  
 — 69 Ut omnes oboediant iudicibus provinciarum, etc.  
 — 80 De quaestore.  
 — 83 Ut clerici apud proprios episcopos primum conveniantur et post haec apud civiles iudices.  
 — 86 Ut differentes iudices audire interpellantium allegationes cognatur ab episcopis hoc agere, etc.  
 — 95 De administratoribus.  
 — 96 De executoribus, etc.  
 — 102 De moderatore Arabiae.  
 — 103 De proconsule Palaestinae.  
 — 104 De praetore Siciliae.  
 — 105 De consulibus.  
 — 114 Ut divinae iussiones subscriptionem habeant gloriosi quaestoris.  
 — 149 Ut praesides provinciarum . . . ex supplicatione episcoporum, etc.  
 — 151 Ne curialis aut officialis sistatur aut in jus deducatur sine . . . imperiali jussu praefectis insinuando.  
 — 152 Ne sacrae formae quae de publicis procedunt aliter valeant nisi . . . praefectis praetorio insinuatae, etc.  
 — 161 De praesidibus.  
 EDICTA (in Appendix to Novels), 4 De magistratu Phoeniciae, etc.  
 — 8 De Ponticae dioceseos vicario.  
 (c) **Post-Justinian:**  
 EPANAGOGA, 2 De imperatore.  
 — 5 De quaestore.  
 — 6 De reliquis magistratibus.  
 — 7 De . . . magistratibus, etc.  
 BAS. 6, 1 De magistratibus, etc.  
 — 6, 2 De consulibus et proconsulibus, et legatis, etc.

- 6, 3 . . . ut praesides, etc.
  - 6, 4 De officio praefectorum urbis et . . . praefecti praetorio.
  - 6, 5 De praefecto vigilum seu praetore plebis.
  - 6, 6 De officio quaestoris, etc
  - 6, 7 De officio praetorum.
  - 6, 8 De praetore Pisi-diae.
  - 6, 9 De praetore Ly-caoniae.
  - 6, 10 De praetore Thra-ciae.
  - 6, 11 De comite Isauriae.
  - 6, 12 De moderatore Helenoponti.
  - 6, 13 De praetore Paph-lagoniae.
  - 6, 14 De descriptione quattuor praesidum Ar-meniae.
  - 6, 15 De moderatore Arabiae.
  - 6, 16 De proconsule Cap-padociae.
  - 6, 17 De proconsule Pal-aestinae.
  - 6, 18 De defensoribus.
  - 6, 19 De vicariis, etc.
  - 6, 20 Ut . . . dux vel biocolyta nullam licentiam habeat . . . cum civiles magistratus idonei sint, etc.
  - 6, 21 Ut omnes obediant praesidibus, etc.
  - 6, 22 Ut praesides inter- (§ 1019)  
pellantis jura audire ab  
episcopis cogantur, etc.
  - 6, 23 De procuratore sive  
rationali, nunc logotheta.
  - 6, 24 De officio juridici  
et iis quibus mandata est  
jurisdictio, et de officio as-  
sessorum.
  - 6, 25 De praepositis sacri  
cubiculi, etc.
  - 7, 1 De iudicibus or-  
dinariis et . . . ne apud as-  
sessorum litium contesta-  
tione, fiant, etc.
  - 7, 4 De executoribus, etc.
  - 56, 19 Ne sacrae formae  
. . . aliter valeant quam si  
. . . praefectis praetorio in-  
sinuatae, etc.
  - 60, 43 De lege Julia,  
quae intenditur adv. magis-  
tratus vel iudices vel as-  
sessorum in iudicio furantes.
- B. Adjournments, post-  
ponements, dies non, holi-  
days.**
- I. Texts of Roman law:—**  
For English translations, see  
supra §§ 945, 946, 948, 951,  
952, 955.
- (a) **Ante-Justinian:**  
COD. THEOD. 2, 7 De dilation.  
— 2, 8 De feriis.  
— 11, 33 De dilationibus  
ex consensu.  
— 15, 6 De Maiuma.

(§ 1019) (b) **Justinian:**

DIG. 2, 12 De feriis et dilationibus, etc.

CODE, 3, 11 De dilationibus.

— 2, 12 De feriis.

— 11, 46 (45) De Maiuma.

(c) **Post-Justinian:**

BAS. 7, 17 De diebus feriatis sive quietis a litibus, et dilationibus, etc.

**C. Courts, judicial organizations, adjournments, postponements, dies non, holidays: modern references.**

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 PETIT, Droit romain, §§ 708-13.  
 ROBY, Roman private law, vol. ii, pp. 312-26, 332-3.  
 SAVIGNY, System, vol. vi, appendix 15.  
 WILLEMS, Droit public romain<sup>7</sup>, pp. 33, 144, 205-79, 298-324, 465-77, 561-607, 631-41.
- 8, 1 De numerariis, ac- (§1019) tuariis, etc.  
 — 8, 2 De tabulariis.  
 — 8, 10 De concussionibus advocatorum.  
 — 8, 7 De diversis officiis, 17.  
 — 9, 9 De mulieribus quae se servis propriis junxerunt.  
 — 10, 15 De advocatis fisci.  
 — 11, 30 De appellationibus, etc.  
 — 13, 10 De censu.  
 — 13, 11 De censitoribus.  
 NOV. THEOD. 10 De . . . perpetuanda advocacione.  
 NOV. VALENTINIAN. 2 De postulando.  
 — 15 De siliquarum exactionibus.  
 — 32 De . . . advocatis, etc.  
 FRAG. VATICAN. 317-41 De . . . procuratoribus.

#### D. Bar and notaries.

##### I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

##### (a) Ante-Justinian:

- GAIUS, i, 184; iv, 21, 25, 82-5, 101.  
 PAULUS, Sent. 1, 2 De procuratoribus, etc.  
 COD. THEOD. 2, 10 De postulando, 6.  
 — 2, 11 De erroribus advocatorum.  
 — 2, 12 De . . . procuratoribus.  
 — 6, 10 De primicerio et notariis.

##### (b) Justinian:

- INST. 1, 11 De adoptionibus, § 3.  
 — 3, 23 De emptione, etc., pr.  
 — 4, 10 De his per quos agere, etc.  
 DIG. 1, 16 De officio proconsulis, etc. 9, § 5.  
 — 2, 4 De in jus vocando, 22, § 1.  
 — 3, 1 De postulando.  
 — 3, 2 De his qui notantur infamia.

- (§1019) — 3, 3 De procuratoribus, etc.  
 — 3, 4 . . . Universitatis nomine vel contra eam agatur.  
 — 17, 1 Mandati vel contra, 7.  
 — 19, 2 Locati, etc., 38, §1.  
 — 26, 10 De suspectis tutor., etc., 3, §15.  
 — 48, 19 De poenis, 9, §§ 4-7.  
 — 50, 4 De muneribus, etc., 18, §17.  
 — 50, 13 De . . . extraordinariis cognitionibus, etc., 1, §§ 10 and 12.  
 CODE, 1, 2 De . . . ecclesiis, etc., 14, § 6 (3).  
 — 1, 4 De episcopali audentia, etc.  
 — 2, 7 De advocatis diversorum judiciorum.  
 — 2, 8 (9) De advocatis fisci.  
 — 2, 9 (10) De errore advocatorum vel libellos seu preces concipientum.  
 — 2, 10 (11) Ut quae desunt advocacioni partum iudex suppleat.  
 — 2, 12 (13) De procuratoribus.  
 — 4, 21 De fide instrumentorum, etc., 17.  
 — 5, 44 De in litem dando tutor. vel curator.  
 — 6, 22 Qui facere testamentum, etc., 8.  
 — 7, 17 De adsertione tollenda.  
 — 7, 62 De appellationibus, 4.  
 — 10, 71 (69) De tabulariis, etc.  
 — 11, 54 (53) Ut nemo ad suum patrocinium, etc., 1.  
 — 11, 58 De censibus, etc.  
 — 12, 7 De primicerio et secundocerio et notariis.  
 — 12, 19 De proximis sacrorum scriniorum, etc., 1.  
 — 12, 49 (50) De numerariis, actuariis . . . exceptoribus sedis excelsae ceterorum iudicum, etc.  
 — 12, 61 (62) De lucris advocatorum et concussionibus, etc.  
 NOV. 44 De tabellionibus, etc.  
 (c) **Post-Justinian:**  
 THEOPHILUS, i, 11, § 3; iii, 23, pr.; iv, 10.  
 BAS. 6, 25 De . . . notariis.  
 — 6, 35 De tabulariis et actuariis . . . et exceptoribus . . . excelsae sedis et reliquorum iudicum, etc.  
 — 8, 1 De postulando, 26.  
 — 8, 2 De procuratoribus, etc.  
 — 21, 3 De . . . infamia, etc.  
 — 22, 2 De tabellionibus, etc.  
 — 54, 8 De tabulariis, etc.  
 HEXABIBLOS, 3, 3 De emtione.

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GIRARD, Droit romain<sup>5</sup>, pp. 934-44.

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— Recherches sur les origines de la responsabilité notariale, 36 Revue gén. du droit, pp. 385-94.

— Un contrat de travail dans les mines de Dacie au temps des Antonins, 33 Revue gén. du droit, pp. 193-8.

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RODRIGUEZ-SERRA, Admission of attorneys from the Spanish standpoint, Am. Bar Proceedings, 1910, p. 840.

SAVIGNY, Geschichte d. röm. Rechts im Mittelalter<sup>2</sup>, vol. i, §§ 16, 106, 140.

- SMITH, Dict. of Greek and Roman antiquities<sup>3</sup>, "advocatus."
- SMITHERS, Hist. of the French notarial system, 60 Univ. of Penn. Law Rev., p. 19.
- STEPHENS, Advocates of Greece and Rome, 54 Albany Law Journal, p. 12.
- VAN WINKLE, The Roman bar, 15 Albany Law Journal, pp. 405, 425.
- VERDAILLE, Le barreau dans l'antiquité romaine, Bordeaux, 1873.
- WILLEMS, Droit public romain<sup>7</sup>, pp. 314, 473, 499, 633.
- E.** See also supra § 1018, infra § 1021; supra vol. ii, §§ 874-907.

### § 1020 Public law in general: references.

#### I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

#### (b) Justinian:

CODE, 11, 30 (29) De jure rei publicae.

#### (c) Post-Justinian:

BAS. 54, 28 De jure reipublicae.

#### II. Modern references:—

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MARQUARDT and MOMMSEN, Handbuch d. röm. Alterthümer<sup>3</sup>, 7 books in 9 vols., Leipzig, 1867-88.

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- WILLEMS, *Droit public romain*<sup>7</sup>, Louvain, 1910.
- WILLIAMS, *State and private life in Roman law*, 15 *Law Mag. and Rev.*, p. 1.
- III. See also *infra* §§ 1021–26; *supra* vol. ii, § 873; vol. i, §§ 30–33, 35, 55, 120, 173.

**Constitutional and administrative law (including the Roman § 1021 civil service): references.**

**I. Texts of Roman law:—**

For English translations, see *supra* §§ 945, 946, 948, 951, 952, 955.

**(a) Ante-Justinian:**

COD. THEOD. i, titles 5–6, 8–10, 12–13, 15–22, 28–9, 33; vi, 2–10, 12, 15–20, 23–9, 32, 37–8; viii, 1–5, 7–9, 11, 15; xii, 12; xiv, 12, 23; xv. (The principal subjects of these titles are the praetorian prefect, praefectus urbi, praefectus vigilum, magister militum, magister officiorum, vicar, rector, consul, proconsul, comes, legatus, praeses, quaestor, rationalis, assessor, defensor civitatis, praetor, senate, knights, patricius, decurio, agentes, notary.)

NOV. MARJORIAN. 3 De defensor. civitat.

NOV. VALENTINIAN. 11–12<sup>7</sup> 22, 30.

**(b) Justinian:**

DIG. i, titles 9–19, 21–2; 1, 5–7. (The principal subjects of these titles are the senate, consul, praetorian prefect, praefectus urbi, praefectus vigilum, praetor, quaestor, proconsul, praefectus Augustalis, praeses, procurator Caesaris, legatus, assessor.)

CODE, i, titles 26–8, 30–41, 43–5, 47–8, 50–52, 55–7; ii, 7–8; iii, 14; vi, 11; vii, 42; x, 41, 65, 71; xi, 20, 30–31, 34, 58; xii, 1–10, 13, 17, 19–27, 31–2, 49, 52–6, 58–9, 61, 63. (The principal subjects of these titles are the praetorian prefect, praefectus urbi, praefectus vigilum, praefectus annonae, prae-

(§1021) **fectus Augustalis**, vicar, rector, consul, proconsul, legatus, praetor, quaestor, magister officiorum, magister militum, magister scri-niorum, comes, defensor civitatis, assessor, advo-cate, notary, apparitor, agentes, decani).

Nov. 10, 13, 15, 17, 20, 24-31, 35, 41, 44, 62, 69, 80, 95-6, 102, 104-5, 114, 134, 145, 149, 151-2, 161, 168. (The principal subjects of these titles are the em-peror, senate, consul, pro-consul, praetor, praetorian prefect, comes, dux, knights, praeses, moderator, defen-sor civitatis, administrator, executor, notary.)

**EDICTA** (Appendix to No-vels), 4, 8, 12-13.

(c) **Post-Justinian:**

**EPANAGOGA**, titles 2, 4-7.

**BAS.** vi, titles 1-25, 27-9, 31, 33-5; vii, 1, 4; xxii, 2; liv. 8-9, 28-9, 23; lvi, 19. (The principal subjects of these titles are the prae-torian prefect, praefectus urbi, praefectus vigilum, consul, proconsul, praetor, comes, dux, vicar, quaestor, praeses, moderator, defen-sor civitatis, procurator, ra-tionalis, assessor, knights,

legatus, executor, notary, decani.)

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**II. Modern references:—**

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— (French translation by **GIRARD**), *Droit public romain*, 8 vols., Paris, 1889-96.

- SANDS, *The client princes of the Roman Empire*, Cambridge, 1906.
- WILLEMS, *Droit public romain*<sup>7</sup>, Louvain, 1910.
- III. See also supra §§ 949, 956, 1018–20; infra §§ 1022–5; supra vol. ii, §§ 441–4, 873; vol. i, §§ 49, 55, 120, 173.

## Municipal corporations: references.

§ 1022

## I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

## (a) Ante-Justinian:

LEX Antonia de Termisibus, 70–72 B.C. (transl. by Hardy, *Six Roman laws*, pp. 94–101, Oxford, 1911).

LEX Coloniae Genetivae Juliae sive Ursonensis (Bruns, *Fontes juris*<sup>6</sup>, p. 123), Leipzig, 1893.

LEX Julia municipalis (transl. by Hardy, *Id.*, pp. 149–64). — (Bruns, *Fontes juris*<sup>6</sup>, pp. 136–64).

LEX municipii Tarentini, (transl. by Hardy, *Id.* pp. 106–9).

LEX Rubria de Gallia Cisalpina (transl. by Hardy, *Id.*, pp. 125–35).

LEX municipalis Salpensana (Bruns, *Fontes juris*<sup>6</sup>, pp. 142–7).

COD. THEOD. 1, 29 De defensor. civitat.

— 1, 30 De curator. civitat.

— 1, 31 De administrat. intra urbem.

— 5, 2 De decurion.

— 6, 23 De decurion., etc.

— 12, 1 De decurion.

— 12, 2 De praebebendo salario.

— 12, 3 De praediis et mancipiis curialium, etc.

— 12, 4 De imponenda lucrativis, etc.

— 12, 5 Quemadmodum munera civilia indicantur.

— 12, 13 De auro coronario.

— 12, 14 De irenarchis.

— 12, 18 Si curialis relict a civitate rus habitare mauerit.

— 12, 19 De his qui condicionem propriam reliquerunt.

— 14, 1 De decuriis urbis Romae.

— 14, 25 De frumento Karthaginiensi.

— 14, 26 De frumento Alexandrino.

— 14, 27 De Alexandrinae plebis primatibus.

- (§ 1022) — 15, 1 De operibus publicis.  
 — 15, 2 De aquaeductu.  
 — 15, 5 De spectaculis.  
 NOV. LEO and SEVERUS, 2.  
 NOV. MARCIAN. 3 De praediis civitatum omnium.  
 NOV. MARJORIAN. 3 De defensor. civitat.  
 — 7 De curialibus, etc.  
 NOV. THEOD. 9 Ne curialis, etc.  
 — 10 De postulando, etc.  
 — 16 Ne curialis, etc.  
 — 23 De locis rei publicae . . . possessis civitatibus, etc.  
 NOV. VALENTINIAN. 3 De succession. curialium, etc.  
 — 15 De siliquarum exaction.  
 — 20 De corporatis urbis Romae, etc.  
 — 32 De confirm. his quae administratibus . . . distracta, etc.
- (b) **Justinian:**  
 DIG. 3, 4 Quod . . . universitatis, etc.  
 — 47, 22 De collegiis et corporibus.  
 — 50, 1 Ad municipalem et de incolis.  
 — 50, 2 De decurion.  
 — 50, 3 De albo scribendo.  
 — 50, 4 De muneribus, etc.  
 — 50, 5 De vacatione et excusatione munerum.  
 — 50, 6 De jure immunitatis.  
 — 50, 8 De administratione rerum ad civitates pertinentium.  
 — 50, 9 De decretis ob ordine faciendis.  
 — 50, 10 De operibus publicis.  
 — 50, 11 De nundinis.  
 — 50, 12 De pollicitationibus.  
 CODE, 1, 55 De defensor. civitat.  
 — 1, 56 De magistratibus municipal.  
 — 3, 23 Ubi quis de curiali vel cohortali, etc.  
 — 6, 62 De hereditatibus decurion., etc.  
 — 10, 22 De apochis publicis et . . . curial.  
 — 10, 32 (31) De decurion.  
 — 10, 33 (32) Si . . . ad decurionatum, etc.  
 — 10, 34 (33) De praediis curial., etc.  
 — 10, 35 (34) Quando . . . decurion., etc.  
 — 10, 36 (35) De imponenda lucrative, etc.  
 — 10, 38 (37) Si curialis relicta civitate rus habitare maluerit.  
 — 10, 39 (38) De municipibus et originariis.  
 — 10, 41 (40) De . . . muneribus, etc.



- 10, 42 (41) De muneri-  
bus, etc.
- 10, 43 (42) Quemad-  
modum civilium munera  
indicantur.
- 10, 44 (43) De . . .  
munera.
- 10, 45 (44) De his qui  
a principe vacationem ac-  
ciperunt.
- 10, 46 (45) De vacatione  
muneris.
- 10, 47 (46) De decretis  
decurion., etc.
- 10, 48 (47) De excusa-  
tionibus munerum.
- 10, 49 (48) De . . .  
muneribus nemini liceat se  
excusare.
- 10, 50 (49) Qui aetate se  
excusant.
- 10, 51 (50) Qui morbo.
- 10, 52 (51) De his qui  
. . . excusationem meru-  
erunt.
- 10, 53 (52) De profes-  
soribus, etc.
- 10, 54 (53) De athleticis.
- 10, 55 (54) De his  
qui non . . . stipendiis,  
etc.
- 10, 58 (56) De liber-  
tinis.
- 10, 62 (60) De filiis  
familias, etc.
- 10, 63 (61) De periculo  
successor. parentis.
- 10, 64 (62) De mulieri-  
bus . . . munera, etc.
- 10, 66 (64) De excusa- (§ 1022)  
tionibus artificum.
- 10, 67 (65)–73 (71) are  
minor titles on munera.
- 10, 77 (75) De irenar-  
chis.
- 11, 14 (13) De decuriis  
urbis Romae.
- 11, 15 (14) De privile-  
giis corporatorum urbis  
Romae.
- 11, 18 (17) De collegiatis,  
etc.
- 11, 21 (20) De privilegiis  
urbis Constantinopolitanae.
- 11, 22 (21) De metropoli  
Beryto.
- 11, 29 (28) De Alexan-  
driae primatibus.
- 11, 32 (31) De vendendis  
rebus civitatis.
- 11, 33 (32) De debitori-  
bus civitatum.
- 11, 36 (35) Quo quisque  
que ordine conveniatur.
- 11, 40 (39) De solutioni-  
bus . . . debitorum civita-  
tis.
- 11, 43 (42) De aquae-  
ductu.
- 11, 57 (56) Ut nullus ex  
vicanis pro alienis debitis  
vicanorum teneatur.
- 11, 70 (69) De diversis  
praediis urbanis, etc.
- 11, 71 (70) De locatione  
praediorum civilium, etc.
- 12, 16 De decurion.
- 12, 62 (63) De primipilo.

- (§ 1022) Nov. 15 De defensor. civitat. — 54, 30 De vendendis rebus civitatis.  
 — 38 De naturalibus in curiam deputandis vel . . . facultate curialium, etc. — 54, 31 De debitoribus civitatis.  
 — 45 Ut haeretici curiales, etc. — 54, 36 De solutionibus . . . debitorum civitatis.  
 — 70 Ut ordinariae praefecturae urbanae . . . a curiali fortuna. — 55, 13 De diversis praediis urbanis et rusticis templorum et civitatum et omni reditu civilu.  
 — 87 De mortis causa donatione a curial. facta. — 58, 12 De operibus publicis et . . . redditibus civitatum.  
 — 101 De donation. a curial. factis, etc. — 58, 19 De magnis aqueductis.  
 — 151 Ne curialis, etc. — 58, 22 De cloacis.  
 — 160 Exemplum sacrae pragmaticae sanctionis.  
 EDICTA (Appendix to Nov.),  
 10 De cohortalibus.

(c) Post-Justinian:

- BAS. 6, 18 De defensoribus.  
 — 40, 1 De bonorum possession., etc.  
 — 48, 3 De manumission. servorum ad universitatem. pertinentium, etc.  
 — 54, 1 De municipibus et muneribus.  
 — 54, 10 De administratione rerum ad civitatem pertinentium.  
 — 54, 19 De privilegiis corporum urbis Romae.  
 — 54, 22 De magistris liberorum in urbe Roma et Constantinopoli.  
 — 54, 23 De privilegiis Constantinopolis et metropolis Beryti.
- II. Modern references:—  
 AMOS, Roman law, pp. 120-21.  
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 ESMEIN, La table de Bantia (Mélanges Esmein, pp. 323-38, Paris, 1886).

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- SOHM (Ledlie<sup>3</sup>), *Roman law*, p. 189.
- WALTZING, *Étude hist. sur les corporations professionnelles chez les romains*, vol. ii, p. 215, Louvain, 1895-1900.
- WHARTON, *Conflict of laws*<sup>2</sup>, § 24.
- WILLEMS, *Les elections municipales à Pompei*, Paris, 1886.  
— *Droit public romain*<sup>7</sup>, pp. 349-75, 508-41, 585-93, 652.
- ZULUETA, *De patrociniis vicorum* (vol. i, Oxford studies in legal history, pp. 1-77, Oxford, 1909).
- III. See also supra §§ 994, 1021; infra §§ 1024-6; vol. ii, §§ 538, 908-12.

## Criminal law: references.

§ 1023

## I. Texts of Roman law: —

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

## (a) Ante-Justinian:

XII TABLES, viii, 9-10, 12-17, 20, 24-6; ix, 2-6.

- (§1023) **LEX** *Acilia repetundarum* (transl. by Hardy, *Six Roman laws*, pp.10-34, Oxford, 1911).
- PAULUS**, *Sent.* 1, 5 *De calumniatoribus*.
- 1, 6b *De reis institutis*.
- 1, 12 *De judiciis omnibus*.
- 2, 26 *De adulteriis*.
- 2, 31 *De furtis*.
- 4, 7 *De lege Cornelia*.
- 5, 3 *De his quae per turbam fiunt*.
- 5, 13 *De delatoribus*.
- 5, 14 *De quaestionibus*, etc.
- 5, 16 *De quaestionibus servorum*.
- 5, 17 *De abolitionibus*.
- 5, 18 *De abactoribus*.
- 5, 19 *De sacrilegis*.
- 5, 20 *De incendiariis*.
- 5, 21 *De vaticinatoribus et mathematicis*.
- 5, 21a (offenses against the coinage; against desertion).
- 5, 22 *De seditiosis*.
- 5, 23 *Ad legem Cornelianam de sicariis et veneficis*.
- 5, 24 *Ad legem Pompeiam de parricidis*.
- 5, 25 *Ad legem Cornelianam testamentariam*.
- 5, 26 *Ad legem Juliam de vi publica et privata*.
- 5, 27 *Ad legem Juliam peculatus*.
- 5, 28 *Ad legem Juliam repetundarum*.
- 5, 29 *Ad legem Juliam majestatis*.
- 5, 30a *Ad legem Juliam ambitus*.
- 5, 31 *De peonis militum*.
- COD. GREGORIAN.** 14 *Ad legem Cornelianam de sicariis et veneficis*.
- 14 *Ad legem Juliam de adulteriis et de stupro*.
- COD. HERMOGENIAN.** *Ad legem Juliam de adulteriis*.
- *De calumniatoribus*, etc.
- COD. THEOD.** 1, 12 *De officio proconsuli et legati*.
- 2, 29 *Si . . . de suffragiis*.
- 6, 27 *De agentibus in rebus*.
- 6, 28 *De principibus agentum in rebus*.
- 6, 29 *De curiosis*.
- 8, 10 *De concussionibus advocatorum*, etc.
- 9, 1 *De accusationibus et inscriptionibus*.
- 9, 2 *De exhibendis vel transmittendis reis*.
- 9, 3 *De custodia reorum*.
- 9, 4 *Si quis imperatori maledixerit*.
- 9, 5 *Ad legem Juliam majestatis*.
- 9, 6 *Ne praeter crimen majestatis*, etc.
- 9, 7 *Ad legem Juliam de adulteriis*.

- 9, 8 Si quis eam, cujus tutor fuerit, corruperit.
- 9, 9 De mulieribus, quae se servis propriis junxerunt.
- 9, 10 Ad legem Juliam de vi publica et privata.
- 9, 11 De privati carceris custodia.
- 9, 12 De emendatione servorum.
- 9, 13 De emendatione propinquorum.
- 9, 14 Ad legem Corneliam de sicariis.
- 9, 15 De parricidis.
- 9, 16 De maleficis et mathematicis, etc.
- 9, 17 De sepulchro violato.
- 9, 18 Ad legem Fabiam.
- 9, 19 Ad legem Corneliam de falso.
- 9, 20 Victum civiliter agere criminaliter posse.
- 9, 21 De falsa moneta.
- 9, 22 Si quis solidi circulum exteriorem inciderit vel adulteratum in vendendo subjecerit.
- 9, 23 Si quis pecunias conflaverit, etc.
- 9, 24 De raptu virginum vel viduarum.
- 9, 25 De raptu vel matrimonio sanctimonialium virginum vel viduarum.
- 9, 26 Ad legem Juliam de ambitu.
- 9, 27 Ad legem Juliam repetundarum.
- 9, 28 De crimine peculatus.
- 9, 29 De his, qui latrones vel aliis criminibus reos occultaverint.
- 9, 30 Quibus equorum usus concessus est, aut denegatus.
- 9, 31 Ne pastoribus dentur filii nutriendi.
- 9, 32 De Nili aggeribus non corrumpendis.
- 9, 33 De his, qui plebem audent contra publicam colligere disciplinam.
- 9, 34 De famosis libellis.
- 9, 35 De quaestionibus.
- 9, 36 Ut intra annum criminalis quaestio terminetur.
- 9, 37 De abolitionibus.
- 9, 38 De indulgentiis criminum.
- 9, 39 De calumniatoribus.
- 9, 40 De poenis.
- 9, 41 Ne sine jussu principis certis iudicibus liceat confiscare.
- 9, 42 De bonis proscribtorum seu damnatorum.
- 9, 43 De sententiam passis et restitutis et liberis eorum.
- 9, 44 De his qui ad statuas confugiunt.
- 9, 45 De his, qui ad ecclesias confugiunt.

- (§ 1023) — 10, 11 De his qui se deferunt.  
 — 11, 26 De discussoribus.  
 — 11, 30 De appellationibus, etc.  
 — 12, 9 De his, quae ex publica conlatione inlata sunt, non usurpandis.  
 — 15, 1 De operibus publicis.  
 — 15, 8 De lenonibus.  
 — 15, 14 De infirmandis quae sub tyrannis aut barbaris gesta sunt.  
 — 15, 15 Quibus armorum usus interdictus est.  
 COLLATIO MOSAIC. ET ROM.  
 1, 1-4 De sicariis et homicidis casu vel voluntate.  
 — 1, 5-13 De casual. homicidis.  
 — 2 De atroci injuria.  
 — 4 De adulteriis.  
 — 5 De stupratoribus.  
 — 6 De incestis nuptiis.  
 — 7 De furibus et de poena eorum.  
 — 8 De falso testimonio.  
 — 11 De abactoribus.  
 — 12 De incendiariis.  
 — 14 De plagiariis.  
 — 15 De mathematicis, maleficis et Manichaeis.  
 NOV. MARJORIAN. 5 De bonis caducis sive proscriptorum.  
 — 9 De adulteriis.  
 NOV. THEOD. 18 De lenonibus.  
 NOV. VALENTIAN. 9 De reddito jure armorum.  
 — 16 De pretio solidi et ne quis solidum integrum recuset.  
 — 19 De homicidis casu factis necne.  
 — 23 De sepulchro. violatoribus.  
 — 33 De parentibus qui filios distraxerunt, et ne ingenui barbaris venunderunt, etc.  
 (b) Justinian:  
 INST. 4, 1 De obligation. . . . ex delicto, etc., §§ 1-19.  
 — 4, 4 De injuriis, § 10.  
 — 4, 18 De publicis judiciis.  
 DIG. 3, 6 De calumniatoribus.  
 — 11, 5 De aleatoribus.  
 — 43, 23 De cloacis.  
 — 47, 2 De furtis.  
 — 47, 4 Si is, qui testamento liber esse jussus erit post mortem domini ante aditam hereditatem subripuisse aut corrupisse, etc.  
 — 47, 5 Furti adversus nautas, caupones, stabularios.  
 — 47, 7 Arborum furtim caesarum.  
 — 47, 8 Vi bonorum raptorum et de turba.  
 — 47, 9 De incendio ruina naufragio rate nave expugnata.  
 — 47, 10 De injuriis et famosis libellis.

- 47, 11 De extraordinariis criminibus.
- 47, 12 De sepulchro violato.
- 47, 13 De concussione.
- 47, 14 De abigeis.
- 47, 15 De praevaricatione.
- 47, 16 De receptatoribus.
- 47, 17 De furibus balneariis.
- 47, 18 De effractoribus et expilatoribus.
- 47, 19 Expilatae hereditatis.
- 47, 20 Stellionatus.
- 47, 21 De termino moto.
- 47, 23 De popularibus actionibus.
- 48, 1 De publicis iudiciis.
- 48, 2 De accusationibus et inscriptionibus.
- 48, 3 De custodia ex exhibitione reorum.
- 48, 4 Ad legem Juliam majestatis.
- 48, 5 Ad legem Juliam de adulteriis, etc.
- 48, 6 Ad legem Juliam de vi publica.
- 48, 7 Ad legem Juliam de vi privata.
- 48, 8 Ad legem Corneliam de sicariis et veneficiis.
- 48, 9 De lege Pompeia de parricidiis.
- 48, 10 De lege Cornelia defalsiset de SC. Liboniano.
- 48, 11 De lege Julia (§ 1023) repetundarum.
- 48, 12 De lege Julia de annona.
- 48, 13 Ad legem Juliam peculatus et de sacrilegis, etc.
- 48, 14 De lege Julia ambitus.
- 48, 15 De lege Fabia de plagiariis.
- 48, 16 Ad. SC. Turpillianum et de abolitionibus criminum.
- 48, 17 De requirendis vel abstinendis damnandis.
- 48, 18 De quaestionibus.
- 48, 19 De poenis.
- 48, 20 De bonis damnatorum.
- 48, 21 De bonis eorum qui ante sententiam vel mortem sibi consciverunt vel accusatorem corruperunt.
- 48, 22 De interdictis et relegatis et deportatis.
- 48, 23 De sententiam passis et restitutis.
- 48, 24 De cadaveribus punitorum.
- 49, 13 Si pendente appellatione mors intervenit.
- 50, 10 De operibus publicis.
- CODE 1, 19 De precibus imperatori offerendis et de quibus rebus supplicare liceat vel non.

- (§1023) CODE, 1, 21 Ut lite pendente vel post provocationem aut definitivam sententiam nulli liceat imperatori supplicare.
- 1, 22 Si contra jus . . . aliquid postulatum vel impetratum.
- 1, 24 De statuis et imaginibus.
- 1, 25 De his qui ad statuas confugiunt.
- 1, 42 De quadrimestris, etc.
- 1, 54 De modo multarum quae ab iudicibus infliguntur.
- 2, 1 De iudiciis.
- 2, 58 (59) De iurejurando propter calumniam dando.
- 3, 7 Ut nemo invitus agere vel accusare cogatur.
- 3, 15 Ubi de criminibus agi oportet.
- 3, 24 Ubi senatores vel clarissimi civiliter vel criminaliter conveniantur.
- 3, 43 De aleae lusu et aleatoribus.
- 4, 3 De suffragio.
- 4, 42 De eunuchis.
- 4, 59 De monopolis, etc.
- 7, 49 De poena iudicis qui male iudicavit, vel ejus qui iudicem vel adversarium corrumpere curavit.
- 8, 11 (12) De operibus publicis.
- 8, 51 (52) De infantibus expositis . . . et de his qui sanguinolentos emptos nutriendos acceperunt.
- 9, 1 Qui accusare non possunt.
- 9, 2 De accusationibus et inscriptionibus.
- 9, 3 De exhibendis vel transmittendis reis.
- 9, 4 De custodia reorum.
- 9, 5 De privatis carceribus inhibendis.
- 9, 6 Si reus vel accusator mortuus fuerit.
- 9, 7 Si quis imperatori maledixerit.
- 9, 8 Ad legem Juliam majestatis.
- 9, 9 Ad legem Juliam de adulteriis et de stupro.
- 9, 10 Si quis eam cujus tutor fuerit corruperit.
- 9, 11 De mulieribus quae servis propriis se junxerunt.
- 9, 11 Ad legem Juliam de vi publica seu privata.
- 9, 13 De raptu virginum seu viduarum nec non sanctimonialium.
- 9, 14 De emendatione servorum.
- 9, 15 De emendatione propinquorum.
- 9, 16 Ad legem Corneliam de sicariis.
- 9, 17 De his qui parentes vel liberos occiderunt.



- 9, 18 De maleficis et mathematicis, etc.
- 9, 19 De sepulchro violato.
- 9, 20 Ad legem Fabiam.
- 9, 21 Ad legem Viselliam.
- 9, 22 Ad legem Corneliam de falsis.
- 9, 23 De his qui sibi abscribant in testamento.
- 9, 24 De falsa moneta.
- 9, 25 De mutatione nominis.
- 9, 26 Ad legem Juliam de ambitu.
- 9, 27 Ad legem Juliam repetundarum.
- 9, 28 De crimine peculatus.
- 9, 29 De crimine sacrilegii.
- 9, 30 De seditiosis et his qui plebem audent contra publicam quietum colligere.
- 9, 31 Quando civilis actio criminali praejudicet et an utraque ab eodem exerceri potest.
- 9, 32 De crimine expilatae hereditatis.
- 9, 33 Vi bonorum raptorum.
- 9, 34 De crimine stellationatus.
- 9, 35 De injuriis.
- 9, 36 De famosis libellis.
- 9, 37 De abigeis.
- 9, 38 De Nili aggeribus non rumpendis.
- 9, 39 De his qui latrones (§ 1023) vel in aliis criminibus reos occultaverint.
- 9, 40 De requirendis.
- 9, 41 De quaestionibus.
- 9, 42 De abolitionibus.
- 9, 43 De generali abolitione.
- 9, 44 Ut intra certum tempus criminalis quaestio terminetur.
- 9, 45 Ad. SC. Turpilianum.
- 9, 46 De calumniatoribus.
- 9, 47 De poenis.
- 9, 48 Ne sine jussu principis certis iudicibus liceat confiscare.
- 9, 49 De bonis proscriptorum, seu damnatorum.
- 9, 50 De bonis mortem sibi consciscientium.
- 9, 51 De sententiam passis et restitutis.
- 10, 6 De his qui ex publicis rationibus mutuam pecuniam acceperunt.
- 10, 10 De petitionibus et ultro datis et delationibus.
- 10, 11 De delatoribus.
- 10, 12 De petitionibus bonorum sublati.
- 10, 13 De his qui se deferunt.
- 10, 59 (57) De infamibus.
- 10, 60 (58) De reis, etc.
- 11, 41 (40) De spectaculis et scaenicis et lenonibus.

- (§1023) CODE, 11, 50 (49) In quibus causis coloni . . . accusare possunt.
- 12, 20 De agentibus in rebus.
- 12, 21 (22) De principibus agentum in rebus.
- 12, 22 (23) De curiosis.
- Nov. 8 Ut iudices sine quoquo suffragio fiant.
- 12 De incestis et nefariis nuptiis.
- 14 De lenonibus.
- 49 De . . . jurejurando calumniae.
- 69 Ut omnes oboediant iudicibus provinciarum et in criminalibus, etc.
- 71 Ut ab illustribus et qui super eam dignitatem sunt . . . criminaliter per procuratorem dicatur, etc.
- 134 Ut nulli iudicum liceat loci servatorem, etc.
- 139 Remissio poenae illicitarum nuptiarum.
- 141 Edictum Justiniani ad Constantinopol. de luxuriantibus contra naturam.
- 142 De iis qui eunuchos faciunt.
- 143 De raptis mulieribus et quae raptoribus nubunt.
- 150 De raptis mulieribus et quae raptoribus nubunt.
- 152 Ne sacrae formae quae de publicis procedunt aliter valeant nisi si . . . insinuatae, etc.
- 153 De infantibus expositis.
- (c) **Post-Justinian:**
- THEOPHILUS, 4, 1 De obligation. . . ex delicto, etc., §§ 1-19.
- 4, 4 De injuriis, § 10.
- 4, 18 De publicis judiciis.
- ECLOGA, 17 De poenis in criminal. causis.
- PROCHIRON, 39 De poenis.
- EPANAGOGA, 40 De poenis.
- BAS. 6, 29 De agentibus in rebus.
- 7, 14 Qui . . . de jurejurando propter calumniam, etc.
- 7, 19 . . . Ut nemo invitus agere vel accusare cogatur.
- 21, 2 De . . . infamia.
- 21, 3 De . . . infamia, etc.
- 28, 6 De incestis nuptiis.
- 31, 9 Si mulier ventris . . . calumniae causa, etc.
- 43, 7 De multis, quae ex condemnatione iudicum veniunt.
- 56, 7 De delationibus.
- 56, 13 Ut nemo ad suum patrocinium suscipiat rusticanos vel vicos eorum.
- 58, 12 De operibus publicis, etc.

- 59, 2 De mortuo inferendo et sepulchro aedificando.
- 60, 1 De . . . poenis, etc.
- 60, 8 De aleatoribus.
- 60, 12 De furto.
- 60, 13 Si quis in testamento liber esse jubeatur et post mortem domini ante aditionem hereditatis subripuisse aut corrupisse, etc.
- 60, 14 De furto adv. caupones et stabularios.
- 60, 16 De arboribus palim vel furtim caesis.
- 60, 17 De bonis raptis, et de turba, et de vi armata.
- 60, 21 De injuriis et famosis libellis.
- 60, 22 De extraordinariis criminibus.
- 60, 23 De violatione sepulcrorum, etc.
- 60, 24 De concussione.
- 60, 25 De abigeis.
- 60, 26 De accusatoribus sive praevaricatoribus.
- 60, 27 De receptatoribus.
- 60, 28 De iis, qui carcere effugiunt, et de expilatione.
- 60, 29 De expilata hereditate.
- 60, 30 Actio in stelliones.
- 60, 31 De termino moto.
- 60, 32 De . . . popularibus actionibus.
- 60, 33 De publicis judiciis.
- 60, 34 De accusationibus (§ 1023) et inscriptionibus.
- 60, 35 De custodia . . . reorum.
- 60, 36 Lex Julia . . . majestatis.
- 60, 37 Lex Julia de adulteriis et de stupro, etc.
- 60, 38 Ut ne lenones ullo loco Romanae reipublicae.
- 60, 39 Lex Cornelia de sicariis et veneficis et mathematicis, etc.
- 60, 40 Lex Pompeia de parricidis.
- 60, 41 Lex Cornelia de falsis et SC. Libonianum.
- 60, 43 De lege Julia . . . adversus magistratus vel judices vel assessores, etc.
- 60, 44 De lege Julia de annona.
- 60, 45 Lex Julia contra peculatores, et de sacrilegis etc.
- 60, 46 Lex Julia in ambitiosos.
- 60, 48 Lex Fabia de plagiaris.
- 60, 49 De requisitione absentium condemnatorum.
- 60, 50 De quaestione.
- 60, 51 De poenis.
- 60, 52 Bonis damnatorum.
- 60, 53 Bonis eorum qui ante sententiam vel mortem sibi consciverunt, etc.

- (§1023) BAS. 60, 54 De interdictis et relegatis et deportatis.  
 — 60, 56 Si reus vel accusator mortuus fuerit.  
 — 60, 57 Si quis eam, cujus tutor fuerit, corruperit.  
 — 60, 60 De adulteratoribus monetæ et mutatione nominis.  
 — 60, 61 De seditiosis et iis qui plebem contra rem publicam audent colligere.  
 — 60, 62 Quando civilis vel criminalis condemnatio et utrum utraque an una tantum ab eodem exerceri possit.  
 — 60, 63 De famosis libellis.  
 — 60, 64 De abolitionibus et de generali abolitione.  
 — 60, 65 Ut intra statutum tempus quaestio finiatur.  
 — 60, 66 De accusatore desistente.  
 — 60, 67 Ne sine jussu principis non statutis iudicibus liceat confiscare.  
 — 60, 68 De sententiis passis et restitutis.  
 — 60, 69 De reliquis punitionum.  
 HEXABIBLOS, Condemnatio adv. iudices proposita a Leone et Alexandro, etc. (second section of preface).  
 — 1, 4 De judiciali sententia et re iudicata.  
 — 1, 5 De delationibus.  
 — 1, 13 De mulieribus (includes "SC. Turpillianum", "tergiversatio").  
 — 1, 16 De militibus.  
 — 6, 1 De damno.  
 — 6, 2 De adulteriis.  
 — 6, 3 De scortatoribus et virginum corruptoribus.  
 — 6, 4 De his qui suo se sanguine miscent.  
 — 6, 5 De furibus, abigeis, sepulcrorum effossoribus et sacrilegis.  
 — 6, 6 De homicidiis et latronibus.  
 — 6, 7 De mulierum raptoribus.  
 — 6, 9 De calumniatoribus et famosi libelli inventoribus.  
 — 6, 10 De veneficis, maleficis et divinatoribus.  
 — 6, 14 De . . . poenis.  
 — 6, 15 De . . . infamia, etc.  
 HEXABIBLOS (leges agrariae, 2), De furto.  
 — (leges agrariae), De incendio.
- II. Modern references:—**  
 (a) **In general:**  
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- GIRARD, Hist. de l'organisation judiciaire des romains, Paris, 1901.
- Droit romain<sup>5</sup>, p. 199.
- HUIER, A French criminal trial, 21 Law Students' Helper, pp. 16-18.
- HUNTER, Roman law<sup>4</sup>, pp. 55-9, 1061-75.
- KEEDY, Criminal procedure in Scotland, 3 Journal of Criminal Law and Criminology, pp. 728, 834.
- LOTMAR, Lex Julia de Adulteriis und Incestum (Mélanges P. F. Girard, vol. ii, pp. 119-53, Paris, 1912).
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- MACKENZIE, Roman law<sup>7</sup>, pp. 396-440.
- MAINE, Ancient law, ch. x.
- MARSHALL, Punishment of crime under the Roman Empire, 23 Law Mag. and Rev., p. 12.
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- (b) **Modern Codes:**
- See the Penal Codes of various countries.
- III. See also supra §§ 1016** (injuria, furtum, rapina), 1018 (especially appeals), 1021, 1022; vol. ii, §§ 913-38; vol. i, §§ 152, 174.

**§ 1024 Financial law (including the treasury department or fiscus of the State, revenues and expenditures of the State, coinage, taxation, public and Imperial domains, mines, public games, trade, commerce, annona, education): references.**

- A. In general.**
- BRISSAUD (Garner, transl.), Hist. of French public law (vol. ix, Continental Legal Hist. Series, pp. 35-7, Boston, 1915).
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SEE also supra §§ 1019, 1021; vol. ii, § 939.

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**B. Imperial treasury or fiscus, indiction, superindiction, taxation, and revenues.**

**I. Texts of Roman law:—**

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

**(a) Ante-Justinian:**

PAULUS, *Sent.* 5, 1a.

ULPIAN, *Reg.* 17 *De caducis*.

COD. HERMOGENIAN. *De jure fisci*.

COD. THEOD. 1, 14 *De officio praefecti Augustalis*.

— 2, 6 *De temporum cursu*, etc.

— 4, 13 *De vectigalibus*, etc.

— 4, 15 *De quinquennii praescriptione*.

— 5, 11 (*De omni agro deserto*).

— 5, 14 (*De diversis praediis urbanis et rusticis et de omni redditu civili*).

— 5, 15 (*De omni deserto*, etc.).

— 5, 16 (*De agricolis et (§ 1024) mancipiis dominicis vel fiscalibus*, etc.).

— 6, 23 *De decurionibus*, etc.

— 6, 30 *De palatinis sacrarum largitionum*, etc.

— 8, 15 *De his, quae administrantibus vel publicum officium gerentibus distracta sunt vel donata*.

— 9, 42 *De bonis proscribitorum seu damnatorum*.

— 10, 1 *De jure fisci*.

— 10, 2 *De locatione fundorum . . . rei publicae*, etc.

— 10, 8 *De bonis vacantiibus*.

— 10, 9 *De incorporatione*.

— 10, 10 *De . . . delatoribus*.

— 10, 11 *De his qui se deferunt*.

— 10, 12 *Si vagum petatur mancipium*.

— 10, 13 *De petitoribus*, etc.

— 10, 14 *Si petitione socius sine herede defecerit*.

— 10, 15 *De advocatis fisci*.

— 10, 16 *De fisci debitoribus*.

— 10, 17 *De fide et jure hastae*.

— 10, 18 *De thesauris*.

— 10, 19 *De metallis et metallariis*.

- (§ 1024) COD. THEOD. 10, 20 De muralibus, etc.  
 — 10, 21 De vestibibus, etc.  
 — 10, 22 De fabricensibus.  
 — 10, 23 De classicis.  
 — 11, 1 De annona et tributis.  
 — 11, 2 Tributa in ipsis speciebus inferri.  
 — 11, 3 Sine censu vel reliquis fundum comparari non posse.  
 — 11, 4 Ne conlatio per logografos celebretur.  
 — 11, 5 De indictionibus.  
 — 11, 6 De superindictio.  
 — 11, 7 De exactionibus.  
 — 11, 8 De superexactionibus.  
 — 11, titles 9–25 concern minor features of taxation and revenue.  
 — 11, 26 De discussoribus.  
 — 11, 27 De alimentis, quae inopes parentes de publico petere debent.  
 — 11, 28 De indulgentiis debitorum.  
 — 12, 1 De decurion.  
 — 12, 2 De praebendo salario.  
 — 12, 6 De susceptoribus . . . et arcariis.  
 — 12, 7 De ponderatoribus et auri inlatione.  
 — 12, 8 De auri publici prosecutoribus.  
 — 12, 10 Ne praefectianus exactoris, etc.  
 — 12, 11 De curator. kalendarii, etc.  
 — 12, 16 De mancipibus.  
 — 13, 1 De lustrali conlatione.  
 — 13, 2 De argenti pretio quod thesauris infertur.  
 — 13, 10 De censu sive adscriptione.  
 — 13, 11 De censitoribus, etc.  
 — 14, 22 De saccariis Portus Romae.  
 NOV. MARCIAN. 2 De indulgentiis reliquorum.  
 NOV. MARJORIAN. 2 De indulgentiis reliquorum.  
 — 5 De bonis caducis sive proscriptorum.  
 — 10 Neque senatorem urbis Romae, etc.  
 NOV. THEOD. 17 De competentibus.  
 — 26 De relevatis, etc.  
 NOV. VALENTINIAN. 1 De indulgentiis reliquorum.  
 — 7 De palatinis.  
 — 13 De tributis fiscal., etc.  
 — 15 De siliquarum exactionibus.  
 — 29 De naviculariis amnicis.  
 — 34 De praediis pistoriis, etc.  
 — 36 De suariis, boariis et pecuariis.



(b) **Justinian :**

DIG. 39, 4 De publicanis et vectigalibus, etc.

— 48, 20 De bonis damnatorum.

— 49, 14 De jure fisci.

— 50, 15 De censibus.

CODE, 2 8 (9) De advocatis fisci.

— 2, 17 (18) Ne fiscus vel res publica procurationem, etc.

— 2, 36 (37) Si adversus fiscum.

— 3, 26 Ubi causae fiscales, etc.

— 4, 15 Quando fiscus, etc.

— 4, 61 De vectigalibus, etc.

— 4, 62 Vectigalia nova institui non posse.

— 6, 62 De hereditatibus decurion., etc.

— 7, 73 De privilegio fisci.

— 9, 49 De bonis proscriptorum seu damnatorum.

— 10, 1 De jure fisci.

— 10, 2 De conveniendis fisci debitoribus.

— 10, 3 De fide et jure hastae fisci, etc.

— 10, 4 De venditione rerum fiscalium, etc.

— 10, 5 Ne fiscus rem quam vendidit evincat.

— 10, 7 Poenis fiscalibus creditores praeferri.

— 10, 8 De fiscalibus usuris. (§ 1024)

— 10, 9 De sententiis adv. fiscum, etc.

— 10, 10 De bonis vacantibus et de incorporatione.

— 10, 11 De delatoribus.

— 10, 12 De petitionibus bonorum sublati.

— 10, 13 De his qui se deferunt.

— 10, 14 Si liberalitatis imperialis socius sine herede defecerit.

— 10, 15 De thesauris.

— 10, 16 De annona et tributis.

— 10, 17 De indictionibus.

— 10, 18 De superindicto.

— 10, 19 De exactionibus tributorum.

— 10, 20 De superexactionibus.

— 10, 21 De capiendis et distrahendis pignoribus tributorum causa.

— 10, 22 De apochis publicis, etc.

— 10, 23 De canone largitionalium titularum.

— 10, 24 Ne operae a collatoribus exigantur.

— 10, 25 De immunitate nemini concedenda.

— 10, 26 De conditis in publicis horreis.

— 10, 27 Ut nemini liceat in co-emptione specierum se excusare, etc.

- (§1024) CODE, 10, 28 De collatione donatorum vel relevatorum, etc.
- 10, 29 De collatione aeris.
- 10, 30 De discussoribus.
- 10, 36 (35) De imponenda lucrativis descriptione.
- 10, 37 (36) De praebendo salario.
- 10, 55 (54) De his qui non impletis stipendiis, etc.
- 10, 57 (56) De conductoribus vectigalium fisci.
- 10, 71 (69) De . . . censualibus.
- 10, 72 (70) De susceptoribus . . . et arcariis.
- 10, 73 (71) De ponderatoribus et auri illatione.
- 10, 74 (72) De auri publici prosecutor.
- 10, 75 (73) De his quae ex publica collatione illata sunt non usurpandis.
- 10, 76 (74) De auro coronario.
- 10, 78 (76) De argenti pretio quod thesauris infertur.
- 11, 1 De tollenda lustralis auri collatione.
- 11, 48 (47) De agricolis censitis, etc.
- 11, 49 (48) De capitatione civium censibus eximenda.
- 11, 50 (49) In quibus causis coloni censiti dominos accusare possunt.
- 11, 58 (57) De censibus, etc.
- 11, 59 (58) De omni agro deserto, etc.
- 11, 70 (69) De diversis praediis urbanis et rusticis . . . et omni redditu civile.
- 11, 71 (70) De locatione praediorum civilium vel fiscalium, etc.
- 11, 72 (71) De conductoribus et procuratoribus sive actoribus praediorum fiscalium, etc.
- 11, 73 (72) Quibus ad conductionem praediorum fiscalium accedere non licet.
- 11, 74 (73) De collatione fundorum fiscalium, etc.
- 12, 60 (61) De executoribus, etc.
- Nov. 128 De collatoribus, etc.
- 147 De reliquis publicis non exigendis et de discussione.
- 148 De indulgentia reliquorum publicorum.
- 149 Ut praesides . . . quidquid iis tributorum publicorum, etc.
- 163 De relevatione tributorum.
- 166 De sterilium adjectione.

CONST. DISPERSAE (in second appendix to Nov.), 4 Ne quis metetur, etc.

EDICTA (in first appendix to Nov.), 2 Ne praesides in fiscalibus asyli jus dent.  
— 10 De cohortalibus.

(c) **Post-Justinian:**

ECLOGA, 18 De partitione spoliurum.

BAS. 7, 11 Ut nemo privatus titulos praediis . . . vel alienis imponat, aut nomen regium suspendat; et ne fiscus, etc.

— 9, 9 De privilegio fisci, etc.

— 10, 19 Si adversus fiscum.

— 15, 3 De agro vectigali petendo.

— 55, 10 De collatione fundorum, etc.

— 56, 1 De publicanis et vectigalibus publicis.

— 56, 2 De jure fisci.

— 56, 3 De censibus, etc.

— 56, 4 De vectigalium exactione.

— 56, 5 De conveniendis fisci debitoribus.

— 56, 6 De fide et jure fisci, etc.

— 56, 8 De annonis et tributis.

— 56, 9 De conditis in publicis horreis.

— 56, 10 De collatione aeris et de retractionibus.

— 56, 11 De susceptoribus . . . et arcariis.

— 56, 12 De collatione illustrium et de auri collatione.

— 56, 14 De censibus . . . inspectoribus.

— 56, 18 De publicorum tributorum exactione, etc.

— 56, 20 De adjectionibus.

— 60, 52 De bonis damnatorum.

HEXABIBLOS, 2, 5 De . . . vectigalibus, etc.

**II. Modern references:—**

COLQUHOUN, Roman law, §§ 8, 35, 380, 437, 1992.

SEE also supra "A"; § 1021; vol. ii, §§ 677, 691.

SMITH, Dict. of Greek and Roman antiq.<sup>3</sup>, "censor".

THIBAUD, Les impôts directs sous le Bas-Empire romain, Paris, 1900.

THOMAS, Le rôle et le choix de l'executor negotii dans la procédure extraordinaire à l'époque de Justinien (Études d'hist. jurid. off. à P. F. Girard, vol. i, pp. 379-416, Paris, 1913).

**C. Public domains and property.**

**I. Texts of Roman law:—**

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(§ 1024) (a) **Ante-Justinian:**

COD. THEOD. 4, 24 De aedificiis . . . publicis.

— 10, 3 De locatione fundorum, etc.

— 14, 14 De campo Martio urbis Romae.

— 15, 2 De aquaeductu.

— 15, 3 De itinere muniendo.

NOV. MARJORIAN. 4 De aedificiis publicis.

NOV. THEOD. 23 De locis rei publicae . . . possessis civitatibus, etc.

(b) **Justinian:**

DIG. 43, 7 De locis et itineribus.

— 43, 8 Ne quid in loco publico vel itinere fiat.

— 43, 9 De loco publico fruendo.

— 43, 10 De via publica et itinere publico reficiendo.

— 43, 12 De fluminibus.  
Ne quid in flumine publico ripave . . . fiat quo peius navigetur.

— 43, 13 Ne quid in flumine publico fiat, etc.

— 43, 14 Ut in flumine publico navigare liceat.

— 43, 15 De ripa munienda.

— 43, 16 De vi et vi armata.

— 43, 17 Uti possidetis.

— 43, 21 De rivis.

— 43, 22 De fonte.

— 43, 23 De cloacis.

CODE, 2, 16 Ut nemo privatus titulos praediis, etc.

— 11, 43 (42) De aquaeductu.

— 11, 56 (55) Non licere metrocomiae habitatoribus loca sua ad extraneum transferre.

— 11, 61 (60) De pascuis publicis, etc.

— 11, 63 (62) De mancipiis et colonis, etc.

— 11, 68 (67) De agricolis, etc.

— 11, 71 (70) De locatione praediorum civilium, etc.

— 11, 72 (71) De conductoribus . . . praediorum, etc.

— 11, 73 (72) Quibus ad conductionem praediorum etc.

— 11, 74 (73) De collatione fundorum, etc.

— 11, 77 (76) De palatiis.

— 12, 44 (45) De litorum et itinerum custodia.

(c) **Post-Justinian:**

BAS. 54, 37 De theatris, etc.

— 55, 13 De diversis praediis . . . templorum et civitatum, etc.

— 58, 8 De locis et itineribus publicis, eorumque fructu et refectioe.

— 58, 16 *Ne quid in flumine publico ripave . . . fiat, quo peius navigetur*, etc.

— 58, 19 *De . . . aqueductis*.

— 58, 22 *De cloacis*.

## II. Modern references:—

HAGLUND, *The Roman law of municipal water supply and aqueduct service*, New Haven, 1914. (Parker Prize Essay, Yale Law School.)

HERSCHEL, *Frontinus and the water supply of the city of Rome*, New York, 1913.

M McNULTY, *Eminent domain in Continental Europe*, 21 *Yale Law Journal*, p. 555.

MOMMSEN, *Röm. Staatsrecht*<sup>3</sup> (book iii, domains of the State), Leipzig, 1887–88.

— (Girard, transl.), *Droit public romain*, vol. vii, pp. 323–64, Paris, 1891.

OSSIG, *Röm. Wasserrecht*, Leipzig, 1898.

WARE, *Roman water law*, St. Paul, 1905.

III. See also supra “A” and infra “D”; supra § 995; vol. ii, §§ 560, 850.

D. The crown properties or the Emperor's private domains and property.

## I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

### (a) Ante-Justinian:

COD. THEOD. 1, 11 *De officio comitis rei privatae*.

— 1, 17 *De officio rationalis summarum et rei privatae*.

— 5, 12 *De fundis patrimonial.*, etc.

— 5, 13 *De fundis rei saltibus divinae*.

— 5, 16 *De agricolis et mancipiis dominicis vel . . . rei privatae*.

— 6, 9 *De . . . comite sacrarum largitionum et rerum privatae*.

— 6, 30 *De palatinis sacrarum largitionum et rerum privatarum*.

— 7, 7 *De pascuis*.

— 10, 2 *De domibus ad rem privatum pertinent.*, etc.

— 10, 3 *De locatione fundorum*, etc.

— 10, 4 *De actoribus . . . rei privatae*.

— 10, 5 *Qui conductores rei privatae*, etc.

— 10, 6 *De grege dominico*.

- (§ 1024) — 10, 7 De Caesarianis.  
 — 10, 9 De incorporatione.  
 — 10, 25 De privilegiis domus Augustae.  
 — 10, 26 De conductoribus et hominibus domus Augustae.  
 — 11, 19 De collatione fundorum . . . rei privatae.  
 NOV. THEOD. 5 De patrimonialibus rei dominicae.  
 — 19 De rescind. vend. fundorum rei dominicae.

**(b) Justinian:**

- CODE, 1, 33 De officio comitis rerum privatarum.  
 — 1, 34 De officio comitis sacri patrimonii.  
 — 11, 61 (60) De pascuis, etc.  
 — 11, 62 (61) De fundis patrimonial., etc.  
 — 11, 64 (63) De fugitivis colonis, etc.  
 — 11, 65 (64) De collatione fundorum, etc.  
 CODE, 11 66 (65) De fundis rei privatae et saltibus divinae domus.  
 — 11, 67 (66) De fundis et saltibus rei dominicae.  
 — 11, 68 (67) De agricolis et Mancipiiis, etc.  
 — 11, 69 (68) De praediis tamiacis, etc.  
 — 11, 71 (70) De locatione praediorum, etc.

- 11, 72 (71) De conductoribus . . . praediorum . . . domus Augustae.  
 — 11, 73 (72) Quibus ad conductionem praediorum, etc.  
 — 11, 74 (73) De collatione fundorum, etc.  
 — 11, 75 (74) De privilegiis domus Augustae, etc.  
 — 11, 76 (75) De grege dominico.  
 — 11, 77 (76) De palatiis.  
 — 11, 78 (77) De cupressis ex luco Daphnensi . . . non excidendis.

NOV. 52 Ut non fiant pignorationes pro aliis personis, etc.

- 162 Sacra forma transmissa dominico, etc.

**(c) Post-Justinian:**

- BAS. 6, 31 De Palatinis et sanct. largitionum et rerum privatarum.  
 — 50, 13 . . . Ne rei dominicae vindictio temporis praescriptione submoveatur.  
 — 55, 10 De collatione fundorum patrimonial., etc.  
 — 55, 14 De cupressis ex luco Daphnensi . . . non excidendis, etc.  
 — 56, 15 De fundis et saltibus dominicis et rei privatae.

**E. Mines and mining.****I. Texts of Roman law:—**

For English translations, see  
supra §§ 945, 946, 948,  
951, 952, 955.

**(a) Ante-Justinian:**

COD. THEOD. 1, 32 De procuratoribus . . . metallorum.  
— 10, 19 De metallis et metallariis.

**(b) Justinian:**

CODE, 11, 7 (6) De metallariis et metallis, etc.

**II. Modern references:—**

BERGE, *Le régime légal des mines dans l'Afrique du Nord*, Paris, 1913.

CUQ, *Un règlement administratif sur l'exploitation des mines au temps d'Hadrien* (Mélanges Gérardin, pp. 87–134, Paris, 1907).

LABORDERIE, *Un contrat de travail dans les mines de Dacie au temps des Antonins*, 33 *Revue gén. du droit*, pp. 193–8.

MISPOULET, *Le régime des mines à l'époque romaine et au moyen-âge*, Paris, 1908.

**F. The coinage.****I. Texts of Roman law:—**

For English translations, see  
supra §§ 945, 946, 948,  
951, 952, 955.

**(b) Justinian:**

(§ 1024)

CODE, 11, 11 (10) De veteris numismatis potestate.

EDICTA (in Appendix to Nov.), 11 Ut nullam copiam . . . et monetariam apud Egyptios . . . sed instar magnae hujus urbis signatum illic aurum fiat, etc.

**(c) Post-Justinian:**

BAS. 54, 18 De veterum nummorum potestate.

**II. Modern references:—**

HILL, *Historical Roman coins to reign of Augustus*, London.

SMITH, *Dictionary of Greek and Roman antiquities*<sup>3</sup>, vol. ii, "moneta", and also "tables of weight" (pp. 1005–8).

III. See also supra § 1023; vol. ii, § 917.

**G. Post-roads.****I. Texts of Roman law:—**

For English translations see  
supra §§ 945, 946, 948,  
951, 952, 955.

**(a) Ante-Justinian:**

COD. THEOD. 6, 31 De stratoribus.

— 8, 5 De cursu publico, angariis, etc.

(§ 1024) COD. THEOD. 8, 6 De tractoriis et stativis.

— 9, 30 Quibus equorum usus concessus est aut denegatus.

(b) **Justinian:**

DIG. 43, 10 De via publica, etc.

CODE, 12, 24 (25) De stratoribus.

— 12, 50 (51) De cursu publico, anguariis, etc.

— 12, 51 (52) De tractoriis et stativis.

(c) **Post-Justinian:**

BAS. 6, 30 De curatoribus cursus.

— 6, 32 De stratoribus, etc.

— 56, 17 De cursu publico, angariis, etc.

**H. Public works.**

**I. Texts of Roman law:—**

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

COD. THEOD. 15, 1 De operibus publicis.

(b) **Justinian:**

DIG. 50, 10 De operibus publicis.

CODE, 8 11 (12) De operibus publicis.

(c) **Post-Justinian:**

BAS. 54, 12 De operibus publicis.

— 58, 12 De operibus publicis, etc.

**II. See also supra vol. ii, § 913.**

**I. Public games.**

**I. Texts of Roman law:—**

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

(a) **Ante-Justinian:**

COD. THEOD. 15, 5 De spectaculis.

— 15, 6 De Maiuma.

— 15, 7 De scaenicis.

— 15, 9 De expensis ludorum.

— 15, 10 De equis curulibus.

— 15, 12 De gladiatoribus.

— 15, 13 De usu sellarum.

(b) **Justinian:**

CODE, 10, 54 (53) De athleticis.

— 11, 41 (40) De spectaculis, etc.

— 11, 42 (41) De expensis publicorum ludorum.

— 11, 44 (43) De gladiatoribus penitus tollendis.

— 11, 46 (45) Se Maiuma.

(c) **Post-Justinian:**

BAS. 54, 38 De expensis ludorum publicorum.



**J. Annona (food supply).****I. Texts of Roman law:—**

For English translations, see  
supra §§ 945, 946, 948, 951,  
952, 955.

**(a) Ante-Justinian:**

PAULUS, Sent. 1, 20a.

COD. THEOD. 7, 4 De erogationis militaris annonae.

— 7, 5 De excoctione et translatione annonarum.

— 11, 1 De annona.

— 14, 15 De canone frumentario urbis Romae.

— 14, 16 De frumento urbis Constantinop.

— 14, 19 De pretio panis Ostiensis.

— 14, 20 De pretio piscis.

— 14, 24 De mensis cleariis.

— 14, 25 De frumento Karthaginiensi.

— 14, 26 De frumento Alexandrino.

**(b) Justinian:**

DIG. 48, 12 De lege Julia de annona.

CODE, 1, 44 De officio praefecti annonae.

— 1, 52 De annonis, etc.

— 10, 16 De annona, etc.

— 11, 23 (22) De canone frumentario urbis Romanae.

— 11, 24 (23) De frumentario urbis Constantinop.

— 11, 25 (24) De annonis civilibus.

— 28 (27) De frumento (§ 1024) Alexandrino.

— 12, 38 (39) De excoctione et translatione annonarum.

— 12, 39 (40) De militari veste.

Nov. 41 Lex ut bonis.

**(c) Post-Justinian:**

BAS. 54, 24 De canone frumentario urbis Romae.

— 54, 25 De frumento Constantinop.

— 54, 26 De annonis civilibus.

— 56, 8 De annonis, etc.

— 57, 4 De annona militari, etc.

— 60, 44 De lege Julia de annona.

**II. See also infra "K"; supra vol. ii, §§ 898, 932.**

**K. Trade and commerce.****I. Texts of Roman law:—**

For English translations, see  
supra §§ 945, 946, 948, 951,  
952, 955.

**(a) Ante-Justinian:**

COD. THEOD. 10, 20 De muregulis, etc.

— 10, 21 De vestibus, etc.

— 10, 22 De fabricensibus.

— 10, 23 De classicis.

— 13, 5 De naviculariis.

— 13, 6 De praediis naviculariorum.

- (§ 1024) COD. THEOD. 13, 7 De navibus non excusandis.  
 — 13, 8 Ne quid oneri publico imponatur.  
 — 13, 9 De naufragiis.  
 — 14, 21 De nautis Tiberinis.  
 — 14, 22 De saccariis Portus Romae.  
 NOV. MARJORIAN. 8 De reddito jure armorum.  
 NOV. THEOD. 8 De navibus ultra duorum milium modiorum capacitatem non excusandis.  
 NOV. VALENTINIAN. 24 De negotiatoribus.  
 — 29 De naviculariis amicis.  
 — 34 De praediis pistoriis, etc.
- (b) **Justinian:**  
 DIG. 50, 11 De nundinis.  
 CODE, 4, 41 Quae res exportari non debeant.  
 — 4, 55 Si servus exportandus veneat.  
 — 4, 59 De monopolis, etc.  
 — 4, 60 De nundinis.  
 — 4, 63 De commerciis et mercatoribus.  
 — 6, 62 De hereditatibus . . . naviculariorum, etc.  
 — 11, 2 (1) De naviculariis, etc.  
 — 11, 3 (2) De praediis naviculariorum.
- 11, 4 (3) De navibus non excusandis.  
 — 11, 5 (4) Ne quid oneri publico imponatur.  
 — 11, 6 (5) De naufragiis.  
 — 11, 8 (7) De murilegulis, etc.  
 — 11, 10 (9) De fabricensibus.  
 — 11, 16 (15) De pistoriis.  
 — 11, 17 (16) De suariis.  
 — 11, 26 (25) De mendicantibus. validis.  
 — 11, 27 (26) De nautis Tiberinis.  
 NOV. 43 De ergasteriis Constantinop., etc.  
 — 85 De armis.  
 — 122 Edictum de constitutione artificum.
- (c) **Post-Justinian:**  
 BAS. 6, 34 De equitis dignitate, etc.  
 — 19, 7 De servis exportandis, etc.  
 — 19, 18 De monopolis, etc.  
 — 53, 6 De piscatoribus, etc.  
 — 53, 7 De emtione et venditione vini.  
 — 54, 16 De purpura Imperatoris, etc.  
 — 54, 17 De fabricensibus.  
 — 54, 20 De suariis, etc.  
 — 54, 27 De mercantibus validis.

BAS. 57, 9 De armis eorum  
confectione, etc.

— 59, 4 De officinis Con-  
stantinop., etc.

II. See also supra "J"; §1010.

#### L. Sumptuary laws.

##### I. Texts of Roman law:—

For English translations, see  
supra §§ 945, 946, 948, 951,  
952, 955.

##### (a) Ante-Justinian:

COD. THEOD. 14, 10 De  
habitu, qui uti oportet intra  
urbem.

##### (b) Justinian:

CODE, 11, 9 (8) De vestibus  
holoveris et curatis, etc.

— 11, 12 (11) Nulli licere  
in frenis et equitibus sellis  
et in balteas margaritas, etc.

#### M. Education.

##### I. Texts of Roman law:—

For English translations, see  
supra §§ 945, 946, 948, 951,  
952, 955.

##### (a) Ante-Justinian:

COD. THEOD. 6, 13 De comiti-  
bus et tribunis scholarum.

— 6, 21 De professoribus,  
qui in urbe Constantinop.  
docentes ex lege, etc.

— 13, 3 De medicis et pro-  
fessoribus.

— 14, 9 De studiis liberali-  
bus urbis Romae et Con-  
stantinop.

NOV. THEOD. 21 De scholari-  
bus, etc.

##### (b) Justinian:

CODE, 10, 53 (52) De pro-  
fessoribus et medicis.

— 11, 19 (18) De studiis  
liberalibus urbis Romae et  
Constantinop.

— 12, 11 De comitibus et  
tribunis scholarum.

— 12, 29 (30) De privilegiis  
scholarum.

##### (c) Post-Justinian:

BAS. 6, 26 De . . . profes-  
soribus.

II. See also supra § 954;  
vol. i, §§ 154-65.

#### N. Libraries.

WILLEMS, *Droit public*  
romain,<sup>7</sup> p. 448.

#### Military law: references.

§ 1025

##### I. Texts of Roman law:—

For English translations, see  
supra §§ 945, 946, 948, 951,  
952, 955.

##### (a) Ante-Justinian:

PAUL. Sent. 5, 31 De poenis  
militum.

- (§1025) COD. THEOD. 1, 14 De officio  
praefect. Augustalis.  
— 5, 6 De bonis militum.  
— 6, 6 De . . . magistris  
militum, etc.  
— 6, 7 De . . . magistris  
militum, etc.  
— 6, 14 De comitibus rei  
militaris.  
— 6, 25 De praepositis la-  
barum.  
— 6, 33 De decanis.  
— 6, 34 De mensionibus.  
— 6, 35 De privilegiis  
eorum qui in sacro palatio  
militarunt.  
— 6, 36 De castrensi . . .  
palatinorum peculio.  
— 7, 1 De re militari.  
— 7, 2 Quid . . . ad mili-  
tiam, etc.  
— 7, 3 Quis in gradu prae-  
feratur.  
— 7, 4 De . . . militaris  
annonae.  
— 7, 5 De . . . transla-  
tione annonarum.  
— 7, 6 De militari veste.  
— 7, 8 De metatis.  
— 7, 9 De satgamo hospiti-  
bus, etc.  
— 7, 10 Ne quis in palatiis  
maneant.  
— 7, 11 Ne comitibus et  
tribunis lavacra, etc.  
— 7, 12 De com meatu.  
— 7, 13 De tironibus.  
— 7, 14 De burgariis.  
— 7, 15 De terris limitaneis.  
— 7, 16 De litorum et itin-  
erum custodia.  
— 7, 17 De lusoriis danu-  
vii.  
— 7, 18 De desertoribus et  
occultatoribus eorum.  
— 7, 19 De saturianis . . .  
et occultatoribus eorum.  
— 7, 20 De veteranis.  
— 7, 21 De testimonial. ex-  
tribunis, etc.  
— 7, 22 De filiis militarium  
. . . et veteranorum.  
— 7, 23 De oblatione  
equorum.  
— 7, 24 De oblatione vo-  
torum.  
— 8, 4 De cohortal., etc.  
— 11, 18 Qui a praebitione  
tironum et equorum excu-  
sentur.  
— 11, 25 De quadrimen-  
struis brevibus.  
— 12, 15 De centurionibus.  
— 14, 11 Quibus militan-  
tibus ad urbem non liceat  
accedere.  
— 15, 3 De itinere munien-  
do.  
— 15, 15 Quibus armorum  
usus interdictus est.  
NOV. MAJORIAN. 8 De red-  
dito jure armorum.  
NOV. THEOD. 4 Duciani, etc.  
— 7 De amota militaribus  
fori praescriptione.  
— 24 De ambitu et locis  
limitaneis, etc.  
— 25 De metatis.

- NOV. VALENTINIAN. 5 De pantapolis ad urbem Romam, etc.
- 6 De tironibus et occultatoribus eorum.
- 9 De reddito jure armorum.
- 20 De corporatis urbis Romae qui ad militiam, etc.
- (b) **Justinian:**
- INST. 2, 11 De militari testamento.
- DIG. 37, 13 De . . . testamento militis.
- 38, 12 De veteranorum et militum successione.
- 43, 15 De ripa munienda.
- 49, 16 De re militari.
- 49, 18 De veteranis.
- CODE, 1, 29 De officio magistri militum.
- 1, 46 De officio judicum militarium.
- 1, 47 Ne comitibus rei militaris, etc.
- 1, 48 Ut . . . militares judices, etc.
- 2, 51 (52) De restitutione militum qui rei publicae causa afuerunt.
- 3, 25 In quibus causis militantes fore praescriptione uti non possunt.
- 5, 65 De excusatione veteranorum.
- 10, 55 (54) De his qui non implendis stipendiis, etc.
- 10, 56 (55) Quibus muneribus excusantur ii, qui post impletam militiam, etc.
- 11, 13 (12) De classicis.
- 11, 47 (46) Ut armorum usus inscio principe interdictus sit.
- 11, 60 (59) De fundis, etc.
- 12, 12 De comitibus rei militaris.
- 12, 18 De praepositis labarum.
- 12, 28 (29) De privilegiis eorum qui in sacro palatio militant.
- 12, 30 (31) De castrensi . . . palatinorum peculio.
- 12, 33 (34) Qui militare possunt vel non, etc.
- 12, 34 (35) Negotiatores ne militent.
- 12, 35 (36) De re militari.
- 12, 36 (37) De castrensi peculio militum, etc.
- 12, 37 (38) De . . . militaris annonae.
- 12, 38 (39) De . . . translatione militarium annonarum.
- 12, 39 (40) De militari veste.
- 12, 40 (41) De metatis.
- 12, 41 (42) De salgamo hospitibus, etc.
- 12, 42 (43) De comenatu.
- 12, 43 (44) De tironibus.

(§ 1025) CODE, 12, 44 (45) De litorum et itinerum custodia.

— 12, 45 (46) De desertoribus et occultatoribus eorum.

— 12, 46 (47) De veteranis.

— 12, 47 (48) De filiis militarium, etc.

— 12, 48 (49) De oblatione votorum.

— 12, 49 (50) De . . . exceptoribus . . . iudicum . . . militarium.

— 12, 57 (58) De cohortal., etc.

NOV. 85 De armis.

— 116 Ut neque miles, etc.

— 130 Quomodo oporteat milites transitum in civitatibus facere et de introitu.

(c) **Post-Justinian:**

THEOPHILUS, 2, 11 De militari testamento.

ECLOGA, 16 De . . . castrensibus militum, etc.

— 18 De partitione spoliolum.

PROCHIRON, 40 De partitione spoliolum.

BAS. 6, 33 De . . . privilegiis eorum qui in sacro palatio militant.

— 6, 35 De . . . exceptoribus . . . iudicum . . . militarium.

— 10, 33 De restitutione militum et eorum, qui rei publicae absunt.

BAS. 25, 6 Quomodo . . . militiae pignori, etc.

— 35, 21 De testamento militis.

— 55, 6 De fundis, etc.

— 56, 16 De militari veste.

— 57, 1 De re militari et de fugitivis, etc.

— 57, 2 De castrensibus peculiis.

— 57, 3 De restitutione militiae.

— 57, 5 De metatis, etc.

— 57, 6 De veteranis, etc.

— 57, 7 De filiis officialium, etc.

— 57, 8 De militibus, etc.

— 57, 9 De armis eorumque confectione et ne liceat arma facere et a privatis ea emere.

HEXABIBLOS, 1, 16 De militibus.

— 6, 8 De transfugis, etc.

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WILLEMS, *Droit public romain*<sup>7</sup>, pp. 557 et seq.

III. See also supra §§ 1020-23; vol. ii, §§ 915, 940.

### Ecclesiastical law: references.

§ 1026

#### I. Texts of Roman law:—

For English translations, see supra §§ 945, 946, 948, 951, 952, 955.

##### (a) Ante-Justinian:

XII TABLES, x; xii, 1.

PAUL. Sent. 1, 21 De sepulchris.

COD. THEOD. 1, 27 De episcopali definitione.

— 5, 3 De clericorum et monachorum.

— 9, 25 De raptu vel matrimonio sanctimonialium virginum, etc.

— 9, 45 De his qui ad ecclesias confugiunt.

— 15, 4 De imaginibus imperialibus.

— 15, 5 De spectaculis.

— 15, 7 De scaenicis.

— 16, 1 De fide catholica.

— 16, 2 De episcopis, ecclesiis et clericis.

— 16, 3 De monachis.

— 16, 4 De his qui super religione contendunt.

— 16, 5 De haereticis.

— 16, 6 Ne sanctum baptismum iteretur.

— 16, 7 De apostatis.

— 16, 8 De Judaeis, caelicis et Samaritanis.

— 16, 9 Ne Christianum mancipium Judaeus habeat.

— 16, 10 De paganis, sacrificiis et templis.

— 16, 11 De religione.

CONST. SIRMUNDIAN. (in appendix to COD. THEOD.), 1-4, 6-16.

NOV. MARJORIAN. 6 De sanctimonialibus vel viduis, etc.

— 10 Neque . . . ecclesiam, etc.

— 11 De episcopali iudicio, etc.

NOV. THEOD. 3 De Judaeis, Samaritanis, haereticis et paganis.

(§ 1026) NOV. VALENTINIAN. 3 De succession. curial. qui ad clericatum transierunt.

— 10 Neque . . . ecclesiam, etc.

— 17 De episcoporum ordinatione.

— 18 De Manichaeis.

— 35 De episcopali iudicio, etc.

(b) **Justinian:**

DIG. 11, 7 De religiosis, etc.

— 11, 8 De mortuo . . . et sepulchro, etc.

— 43, 6 Ne quid in loco sacro fiat.

— 50, 12 De pollicitationibus.

CODE, 1, 1 De summa trinitate et de fide catholica.

— 1, 2 De sacrosanct. ecclesiis et . . . privilegiis earum.

— 1, 3 De episcopis et clericis et orphanotrophis, etc.

— 1, 4 De episcopali audentia, etc.

— 1, 5 De haeticis et Manichaeis et Samaritis.

— 1, 6 Ne sanctum baptismum iteretur.

— 1, 7 De apostatis.

— 1, 8 Nemini licere signum salvatoris Christi vel in silice vel in marmore aut sculpere aut pingere.

— 1, 9 De Judaeis et caelicis.

— 1, 10 Ne Christianum mancipium haeticus vel paganus vel Judaeus habeat, etc.

— 1, 11 De paganis sacrificiis et templis.

— 1, 12 De his qui ad ecclesias confugiunt, etc.

— 1, 13 De his qui in ecclesiis manumittuntur.

— 3, 43 De aleae lusu et aleatoribus.

NOV. 3 Ut determinatus sit numerus clericorum sanct. majoris ecclesiae et ceterarum sanct. ecclesiarum Constantinop.

— 5 De monachis.

— 6 Quomodo oporteat episcopos et reliquos clericos ad ordinationem deduci, etc.

— 7 De non alienandis aut permutandis ecclesiasticis rebus . . . aut in . . . hypothecam dandis, etc.

— 9 Ut ecclesia Romana centum annorum habeat praescriptionem.

— 11 De privilegiis archiepiscopi primae Justinianae.

— 16 De mensura ordinandorum clericorum.

— 37 De Africana ecclesia.

— 40 Ut ecclesia sanctae resurrectionis possit alienare habitacula, etc.



- 42 De depositione An-  
thimi, etc.
- 43 . . . Ut mille cen-  
tum ergasteria majoris ec-  
clesiae (Constantinop.) ex-  
cusentur, etc.
- 45 Ut haeretici curiales  
et munia impleant, etc.
- 46 De ecclesiasticarum  
immobilium rerum aliena-  
tione et solutione.
- 54 Constitutionem quae  
ex adscriptio et libera-  
tos esse liberos vult, etc.
- 55 Ut de cetero commu-  
tatione ecclesiasticarum  
rerum, etc.
- 56 Ut ea quae vocantur  
insinuativa super clericis,  
etc.
- Ut clerici, . . . et ut si  
quis aedificans ecclesiam  
. . . probatione sanctissimi  
patriarchae, etc.
- 58 Ut in privatis domi-  
bus sacra mysteria non  
fiant.
- 59 De expensis quae  
fiunt circa defunctorum exe-  
quias.
- 65 De alienatione rerum  
ecclesiae Mysiae relictarum  
pro captivorum redem-  
tione, etc.
- 67 Ut nullus fabricet  
oratorii domum praeter vol-  
untatem episcopi, etc.
- 76 Haec constitutio in-  
terpretatur prior const. de  
his qui ingrediuntur in mon-  
asterium et de substantiis  
eorum, etc.
- 77 Ut . . . neque blas-  
phematur in Deum.
- 79 Apud quas oporteat  
causam dicere monachos  
et ascetrias.
- 81 Constitutio quae dig-  
nitatibus et episcopatu li-  
berat filium patria potes-  
tate.
- 83 Ut clerici apud prop-  
rios episcopos primum con-  
veniantur et post haec apud  
civiles iudices.
- 86 Ut differentes iudices  
audire interpellantium al-  
legationes cogantur ab epis-  
copis hoc agere, etc.
- 109 De privilegiis dotis  
haereticis mulieribus non  
praestandis.
- 111 Haec constitutio  
innovat const. quae prae-  
scriptionem centum an-  
norum locis venerabilibus  
dederat.
- 120 De alienatione em-  
phyteosi et locatione et  
hypothecis . . . rerum sac-  
rarium.
- 123 De sanctissimis . . .  
episcopis et clericis et mon-  
achis.
- 129 De Samaritis.
- 132 De interdictis col-  
lectis haereticorum.

- (§1026) Nov. 133 Quomodo oportet monachos vivere.
- 137 De creatione episcoporum et clericorum.
- 144 De Samaritis.
- 146 Ut liceat Hebrais, etc.
- 149 Ut praesides provinciarum gratis fiant ex supplicatione deo carissimorum episcoporum, etc.
- CONST. DISPERSAE (in second appendix to Nov.), 2-3 Jussio Justiniani imperatoris pro privilegio concilii Byzaceni.
- EDICTA (in first appendix to Nov.), 1.
- 2 Ne praesides in fiscalibus asyli jus dent.
- 12 De Hellesponto.
- (c) **Post-Justinian:**
- PROCHIRON, 24 De testamento episcoporum, etc.
- 28 De ordinatione episcoporum et presbyterorum.
- EPANAGOGA, 3 De patriarcha.
- 8 De episcopo ejusque ordinatione et nominatione.
- 9 De episcopis et presbyteris, etc.
- BAS. 1, 1 De summa trinitate et fide catholica, etc.
- 3, 1 De episcopis et clericis, et ordinatione et privilegiis eorum.
- 3, 2 De numero clericorum magnae ecclesiae Constantinop. definiendo.
- 3, 3 De clericis ex una ecclesia in alteram transferendis, etc.
- 3, 4 De clericis, qui a sua ecclesia discedunt, etc.
- 4, 1 De monasteriis et monachis et ascetis, etc.
- 5, 1 De ecclesiis et monasteriis, etc.
- 5, 2 De alienatione et emphyteusi rerum ecclesiasticarum.
- 5, 3 De ecclesiasticis canonibus et privilegiis eorum.
- 6, 22 Ut praesides interpellantis jura audire cunctantes ab episcopis id facere cogantur, etc.
- 31, 5 Constitutio, quae per dignitates et episcopatum filios patria potestate liberat.
- 58, 15 Ne quid in loco sacro fiat.
- 59, 1 De monumentis et sumtu funerum.
- 59, 3 De funere et sumtibus funerum.
- 59, 4 . . . Ut mille et centum officinae magnae ecclesiae (Constantinop.) . . . excusentur, etc.
- 60, 58 De raptore virginum . . . sanctimonialium.

HEXABIBLOS, 2, 5 De muneribus, etc.

— 2, 9 De iis qui confugium quaerunt.

— 4, 5 De civile matrimonii rigore.

— 5, 4 De testamento episcoporum et monachorum.

— 6, 11 De Judaeis, paganizantibus et haereticis.

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— (French transl. by BRIS-<sup>(§ 1026)</sup> SAUD), *Le culte chez les romains*, 2 vols., Paris, 1889-90.

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III. See also *supra* § 1023; vol. ii, §§ 466, 492, 903, 933, 940; vol. i, §§ 116-19, 144-53, 174, 225-30.



PART II

BIBLIOGRAPHY OF ROMAN LAW



## PART II

### BIBLIOGRAPHY OF ROMAN LAW

**List of Roman law treatises; books containing texts of § 1027 Roman law.** This is a list of the principal works (mostly modern) — treatises and tests — on Roman law. Although care has been exercised to give the latest editions of the books listed, it is not claimed that the editions given are always the latest. For magazine articles on Roman law and also for books incidentally treating of Roman law, see *supra* §§ 941–1026.

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